

APPLICATION ACCEPTED: January 16, 2015
ADMIN. MOVED AT APPL. REQUEST
BOARD OF ZONING APPEALS: September 16, 2015 @ 9:00 a.m.

County of Fairfax, Virginia

September 9, 2015

STAFF REPORT

SPECIAL PERMIT SP 2015-MA-010
VARIANCE VC 2015-MA-001

MASON DISTRICT

APPLICANT: Mariano C. Evangelista, Jr.

OWNERS: Mariano C. Evangelista, Jr.
Armida A. Evangelista

SUBDIVISION: Woodley, Section 4

STREET ADDRESS: 7208 Westmoreland Road,
Falls Church, 22042

TAX MAP REFERENCE: 50-3 ((4)) 194

LOT SIZE: 11,520 square feet

ZONING DISTRICT: R-4

ZONING ORDINANCE PROVISIONS: 8-914, 8-922, 18-401

SPECIAL PERMIT PROPOSALS: To permit a reduction in certain yard requirements to allow a partially constructed addition to remain 5.4 feet from side lot line and reduction in minimum yard requirements based on error in building location to permit a dwelling to remain 5.0 feet from side lot line and a deck (patio) to remain 2.5 feet and 17.9 feet from front lot lines, a deck (patio) to remain 1 foot from a side lot line, and a deck (patio) to remain 1.2 feet from a rear lot line.

VARIANCE PROPOSALS: To allow greater than 30% front yard coverage paved for parking and to allow greater than 30% rear yard coverage.

Laura B. Arseneau

Department of Planning and Zoning
Zoning Evaluation Division
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035-5509
Phone 703-324-1290 FAX 703-324-3924
www.fairfaxcounty.gov/dpz/



STAFF RECOMMENDATIONS:

Staff recommends approval of SP 2015-MA-010 for the addition with adoption of the proposed development conditions contained in Appendix 1.

Staff recommends denial in part of VC 2015-MA-001 for front yard coverage greater than 30 percent. However, if it is the intent of the BZA to approve this portion of the Variance application, the BZA should condition its approval by requiring conformance with the proposed development conditions contained in Appendix 2.

Staff recommends approval in part of VC 2015-MA-001 for the rear yard coverage greater than 30 percent with the proposed development conditions contained in Appendix 2.

It should be noted that it is not the intent of staff to recommend that the Board, in adopting any conditions, relieve the applicant/owner from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Zoning Appeals.

A copy of the BZA's Resolution setting forth this decision will be mailed within five days after the decision becomes final.

The approval of this application does not interfere with, abrogate or annul any easements, covenants, or other agreements between parties, as they may apply to the property subject to the application.

For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 703-324-1280, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035. **Board of Zoning Appeals' meetings are held in the Board Room, Ground Level, Government Center Building, 12000 Government Center Parkway, Fairfax, Virginia 22035-5505**



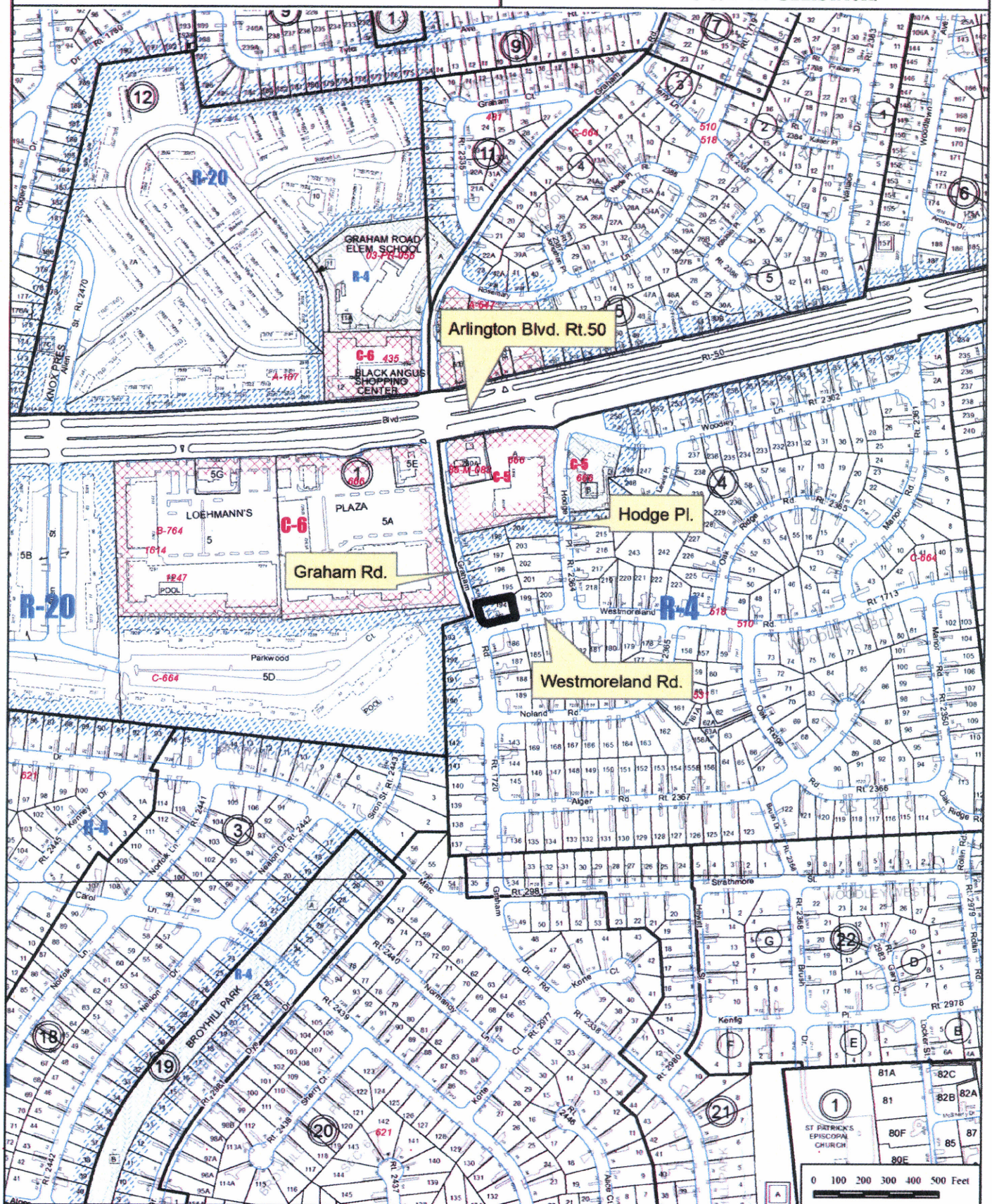
Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

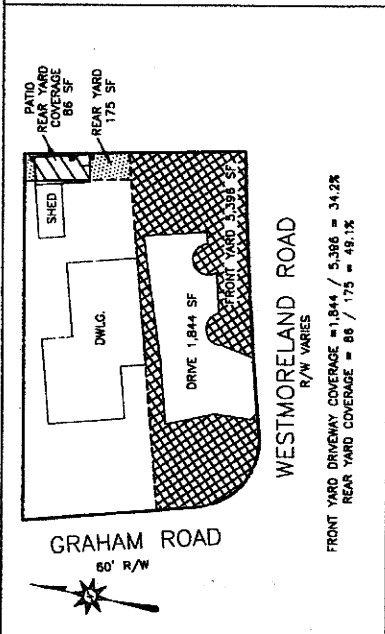
Special Permit

SP 2015-MA-010
MARIANO C. EVANGELISTA JR.

Variance Application

VC 2015-MA-001
MARIANO C. EVANGELISTA JR.



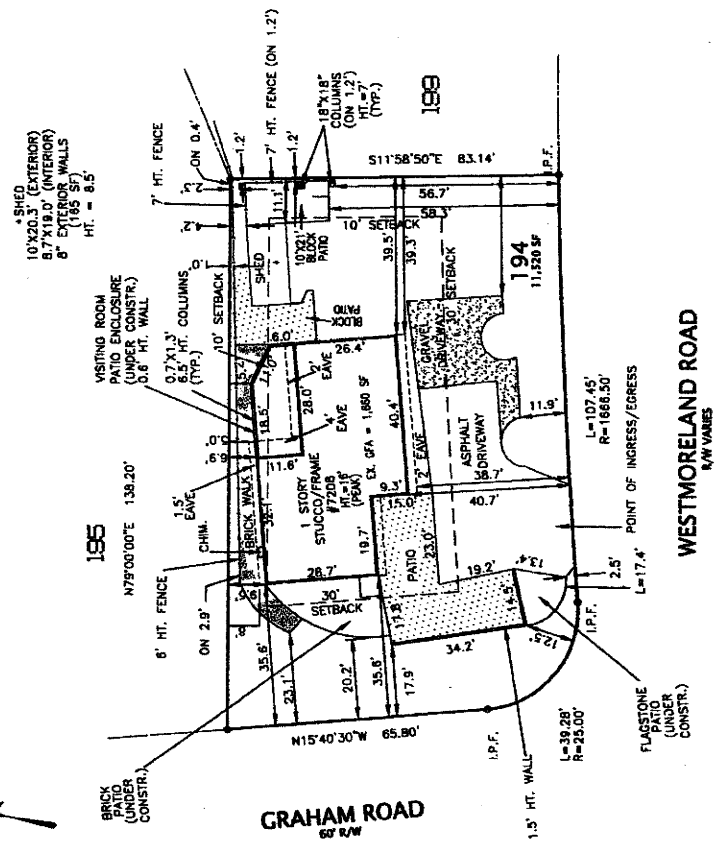


WESTMORELAND ROAD
R/W VARIES

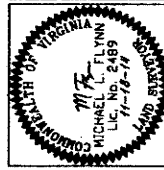
FRONT YARD DRIVEWAY COVERAGE = 1,844 / 5,391 = 34.2%
REAR YARD COVERAGE = 86 / 175 = 49.1%

NOTES:

1. TM #050-3-04-0194.
2. ZONE: R-4
3. SETBACKS: FRONT = 30', SIDE = 10', REAR = 25'.
4. PROPERTY IS SERVED BY PUBLIC SEWER AND WATER.
5. THERE ARE NO KNOWN GRAVES OR STRUCTURES MARKING A PLACE OF BURIAL ON THIS SITE.
6. THERE ARE NO MAJOR UNDERGROUND UTILITIES OR EASEMENTS FOR SUCH UTILITIES HAVING A WIDTH OF 25 FEET OR GREATER LOCATED ON THIS SITE.
7. EXISTING GROSS FLOOR AREA:
DWELLING = 1,844 SF
TOTAL = 1,844 SF
PROPOSED GROSS FLOOR AREA:
VISITING ROOM PATIO ENCLOSURE = 298 SF
TOTAL POST CONSTRUCTION FLOOR AREA = 2,121 SF
EXISTING FLOOR AREA RATIO = 0.16
PROPOSED FLOOR AREA RATIO = 0.18
8. THIS SITE DOES NOT CONTAIN 100-YEAR FLOOD PLAIN OR 100-YEAR FLOOD PROTECTION AREA (FPA). SITE IS LOCATED ENTIRELY WITHIN THE RESOURCE MANAGEMENT AREA (RMA).
9. NO ADDITIONAL LANDSCAPING OR SCREENING IS PROPOSED WITH THIS PLAN.
10. ARCHITECTURAL DETAILS OF PROPOSED STRUCTURES TO BE PROVIDED SEPARATELY.



SPECIAL PERMIT PLAN
LOT 194 SECTION 4
WOODLEY
FAIRFAX COUNTY, VIRGINIA
SCALE: 1" = 20'
REVISED 9/27/14 (ADDITIONAL DIMENSIONS)
REVISION 11/16/14 (ADDITIONAL DIMENSIONS)



IF PORTION OF THE PERMIT PLAN IS NOT USED FOR THE PROJECT, THIS PERMIT WILL BE VOID.

RECEIVED BY
HARRISON C. EVANGELISTA
ALEXANDRIA SURVEYS, LLC
3445 PRINCE DRIVE, STE. 4100 FARMAS, VIRGINIA 22039
TEL. 703.438.1515 FAX 703.704.8144

SPECIAL PERMIT REQUEST

The applicant is seeking a special permit to allow a partially constructed addition to remain 5.4 feet from a side lot line and to permit a reduction in minimum yard requirements based on errors in building locations to permit the dwelling to remain 5.0 feet from a side lot line and a deck (patio) to remain 2.5 feet and 17.9 feet from front lot lines, a deck (patio) to remain 1.0 foot from a side lot line, and a separate deck (patio) to remain 1.2 feet from a rear lot line. There are three patios in error in this application. The Zoning Ordinance for setbacks defines a patio as a deck under four feet in height.

	Structure	Yard	Minimum Yard Required	Existing Location	Existing Reduction	Percentage of Reduction Requested
Special Permit	Addition	Side	10.0 feet	5.4 feet	4.6 feet	46 %
	Dwelling	Side	10.0 feet	5.0 feet	5.0 feet	50 %
	Deck/ Patio #1	Front (West-moreland)	30 feet	2.5 feet	27.5 feet	91.7%
		Front (Graham)	30 feet	17.9 feet	12.1 feet	40.3%
	Deck/ Patio #2	Side	10 feet	1.0 foot	9 feet	90%
	Deck/ Patio #3	Rear	25 feet	1.2 feet	23.8 feet	95.2 %

VARIANCE REQUEST

The applicant is seeking a variance to allow greater than 30 percent front yard coverage for an existing paved and gravel driveway to remain. The applicant's driveway covers 34.2 percent of the front yard.

The applicant is also seeking a variance to allow greater than 30 percent rear yard coverage to allow an existing shed and patio to remain. The shed and patio cover 49.1 percent of the rear yard.

A copy of the special permit plat, titled, "Special Permit Plat, Lot 194, Section 4, Woodley," prepared by Michael L. Flynn, L.S., dated February 27, 2014 as revised through November 18, 2014, is included in the front of the staff report.

Copies of the proposed development conditions, the statement of justification with select file photographs, and the affidavit are contained in Appendices 1 through 4, respectively.

CHARACTER OF THE SITE AND SURROUNDING AREA

The application property is located at the northeast corner of Graham Road and Westmoreland Road. It is developed with a one story single-family detached dwelling. The property has two front yards and a gravel/asphalt driveway which provides access from Westmoreland Road. A patio is located in both front yards of the property to the southwest. A brick walkway and a patio enclosure are located in the side yard of the property. Two patios and an 8.5 foot high, 165 square foot shed are located in the rear yard of the property. A wood fence, ranging from 6 feet to 7 feet in height, is located along a portion of the side property line and along a portion of the rear property line.

The property is located south of Arlington Boulevard and east of Loehmann's Shopping Plaza. The subject property and properties to the north, east, and south are zoned R-4 and developed with single-family detached houses. Properties to the west are zoned C-6 and R-20 and developed with a commercial shopping plaza and multifamily housing, respectively.

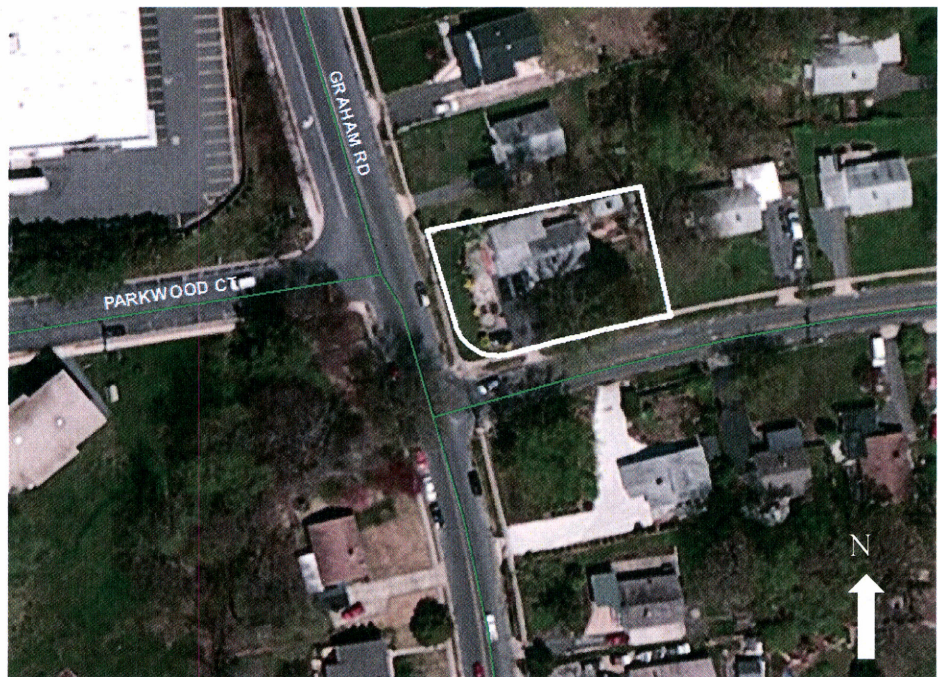


Figure 1: House Location
For illustrative purposes only

BACKGROUND

Fairfax County Tax Records and building permit records indicate that the house was constructed in 1951, purchased by the property owners in 1992 and an addition was constructed in 2005.

Complaint and Building Permit History

- July 12, 2012- A complaint was received by the Department of Code Compliance (DCC) related to a violation in zoning setbacks. The complaint is currently under investigation and disposition is awaiting the result of this special permit application (Appendix 5).
- August 16, 2012- A final inspection was passed for the enclosure of a carport to the west of the dwelling into living space (Appendix 6).

Court History

- October 23, 2009- A Final Court Order was entered requiring the applicant to bring the accessory storage structure (over 8.5 feet in height and over 200 square feet in size and located in the minimum required setbacks) into compliance with the Zoning Ordinance (Appendix 7).
- June 24, 2011- A Court Order was entered noting that the applicant brought the property into compliance with the Zoning Ordinance related to the accessory structure outlined above (Appendix 7).
- November 1, 2013- An Agreed Final Order was entered that outlined zoning violations related to the location of an addition, the location and height of concrete block posts, and the height of a fence in the rear yard. The Agreed Final Order mandated that the applicant file a Special Permit application to remedy the zoning violations and set a deadline to obtain the special permit by March 1, 2014 or if it was denied to remove all items in violation by April 1, 2014 (Appendix 8).
- April 24, 2014- A Court Order noted that the applicant was not in contempt of court but that they needed to submit a full and complete special permit application by June 25, 2014. The submission was to include a plat, and justification to keep the items cited for violation. The case was continued to December 19, 2014 (Appendix 9).
- December 19, 2014- A Court Order noted that the Agreed Final Order filed on November 1, 2013 did not list a date to start imposing fines for the outstanding violations in the Zoning Ordinance and fines would begin on December 19, 2014. The defendants (applicant) were found in contempt of court for having failed to comply with the court order. In addition, the applicant needed to submit photographs of the patios in violation, the front and rear yard coverage and also submit a variance application form. The applicant was given a deadline of January 23, 2015 to submit all of the items and the case was continued until January 23, 2015 (Appendix 10).
- January 16, 2015- The application was received and accepted by the Department of Planning and Zoning- Zoning Evaluation Division.
- January 23, 2015 – A Court order was entered that dismissed the finding of contempt because Mr. Evangelista had submitted a complete special permit application which was accepted by DPZ on Jan. 16, 2015.

Similar Cases approved by the BZA (Appendix 11)

Records indicate that a similar case in the same neighborhood was previously approved by the BZA. On July 28, 2009, a special permit was approved by the BZA for a reduction to minimum yard requirements to permit the construction of an addition 24.0 feet from both front lot lines on a corner lot (case SP 2009-MA-036). This application is located a block away from the subject property at the corner of Westmoreland Street and Noland Road.

DESCRIPTION OF THE PROPOSED USE**Addition**

The request for a reduction in minimum required yards is for a partially constructed existing patio enclosure that has walls 6.5 feet in height and located 5.4 feet from the side lot line. The addition is located to the north of the dwelling.

Errors in Building Location

There are six requests in total relating to errors in building locations. The applicant requests a special permit to allow three decks (patios) to remain in their current locations. The Special Permit Request section above lists the specific setback requests.

Front Yard Coverage Variance

The applicant requests a variance to allow greater than 30 percent of front yard coverage for a paved and gravel driveway. The asphalt driveway accesses Westmoreland Road and a portion of the driveway has been extended to the east with gravel. The total impervious area in the front yard is approximately 34.2 percent; therefore, the applicant is requesting an increase of 4.2 percent or 225.2 square feet.

Rear Yard Coverage Variance

The applicant is requesting to allow greater than 30 percent of the maximum allowable rear yard coverage for a patio. The total impervious area in the rear yard is approximately 49.1 percent; therefore the applicant is requesting an increase of 19.1% or 33.5 square feet. In the Statement of Justification the applicant stated that he was unaware of any provisions that restricted the amount of impervious rear yard coverage.

ANALYSIS**Comprehensive Plan Provisions**

Plan Area: Area I, Jefferson Planning District
Planning Sector: Westlawn Community Planning Sector (J3)

Plan Map: Residential, 3-4 du/ac

Zoning District Standards

Bulk Standards (R-4)		
Standard	Required	Provided
Lot Size	8,400 sf.	11, 520 sf.
Lot Width	Corner: 90 feet	107.45 feet
Building Height	35 feet max.	16 feet
Front Yard	Min. 30 feet	38.7 feet
Side Yard	Min. 10 feet	5.0 feet ¹
Rear Yard	Min. 25 feet	39.3 feet

1. Modification of minimum required side yard setbacks is being requested with this application.

Limitations For Accessory Structures				
Structure	Yard	Minimum Yard Required	Existing Location	Permit Status
Shed	Side and rear	Under 8.5 feet in height ¹	11.1 feet from the side yard 4.2 feet from the rear yard	n/a
Brick Patio	Front (Graham Road)	30 feet	20.2 feet	n/a

1. According to Sect. 10-104 of the Zoning Ordinance if a shed is less than 8.5 feet in height then it can be located anywhere in the side or rear yard.

Zoning Ordinance Requirements (Appendix 12)

- Sect. 8-006 General Special Permit Standards
- Sect. 8-903 Standards For All Group 9 Uses
- Sect. 8-914 Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location
- Sect. 8-922 Provisions for Reduction of Certain Yard Requirements

General Standards for Special Permit Uses (Sect. 8-006)

Standards 1 and 2 Comprehensive Plan/ Zoning District	The Comprehensive Plan recommends residential uses and the property is developed with a residential use.
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Standard 3 Adjacent Development	No new construction is proposed. In staff's opinion, the proposed use will not hinder or discourage the use or development of neighboring properties or negatively affect value.
Standard 4 Pedestrian/Vehicular Traffic	No additional pedestrian or vehicular traffic is proposed with this application.
Standard 5 Landscaping/Screening	There is an existing fence along the side and rear yards that provide screening.
Standard 6 Open Space	Open space is not a requirement in an R-4 District.
Standard 7 Utilities, Drainage, Parking, and Loading	There are no changes to the utilities, drainage, parking or loading on the property.
Standard 8 Signs	No signage is proposed.

Standards for all Group 3 Uses (Sect. 8-303)

Standard 1 Lot Size and Bulk Regulations	The property meets the bulk regulations for the R-4 District. No new construction or exterior modifications are proposed.
Standard 2 Performance Standards	The use will comply with the performance standards set forth in Article 14 of the Zoning Ordinance.
Standard 3 Site Plan	This application is not subject to the provisions of Article 17, Site Plans.

Errors in Building Locations (Sect. 8-914)

Staff does not make recommendations on applications for errors in building locations, which in this case includes the locations of the existing dwelling and three patios. According to the Statement of Justification, the applicant was unaware of the setback requirements for the dwelling or the patios.

Standards for Reduction of Certain Yard Requirements (8-922)- Addition

Standard 1 Yard Requirements Subject to Special Permit	<p><i>A. Minimum Required Yards - Yard not less than 50% of the requirement and not less than 5 feet:</i> The proposed addition will be located 5.0 feet from the northern side lot line. The required side yard in an R-4 District is 10.0 ft., resulting in a reduction 50 percent.</p> <p><i>B. Pipestem Lots:</i> N/A</p> <p><i>C. Accessory Structure Locations:</i> N/A</p> <p><i>D. Extensions into Minimum Required Yards:</i> N/A</p>
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Standard 2 <i>Not a Detached Structure in a Front Yard</i>	The application does not propose a detached accessory structure.
Standard 3 <i>Principal Structure that Complied with Yard Requirements When Established</i>	The subject property contains a single family dwelling which is an existing principal structure.
Standard 4 <i>Addition No More than 150% of the Gross Floor Area (GFA) at the Time of First Expansion Request</i>	The proposed one-story addition is 296 square feet and partially constructed. The existing GFA of the primary structure is 1,660 square feet; therefore the proposed addition will be 33.3% of the GFA and does not exceed this standard.
Standard 5 <i>Accessory Structure Subordinate in Purpose, Scale, Use and Intent</i>	As the proposed addition is not an accessory structure, this standard does not apply.
Standard 6 <i>Construction in Character with On-Site Development</i>	The elevation drawings indicate that the size and scale of the proposed addition would be compatible with on-site development. The proposed addition is being constructed to the north of the dwelling out of cinderblock. Staff has included a development condition to ensure the applicant will paint the cinderblocks to match the coloring of the rest of the dwelling.
Standard 7 <i>Construction Harmonious with Off-Site Development</i>	Through aerial photography, submitted photographs, and background research staff has confirmed that there are similar additions located in side yards on the neighboring properties. The proposed addition would not affect neighboring properties in terms of location, height and bulk, or vegetation.
Standard 8 <i>Construction Shall Not Adversely Impact Adjacent Properties</i>	Staff believes that the proposed addition, at approximately 296 square feet, will not significantly impact the use and/or enjoyment of any adjacent property with regard to issues such as noise, light, air or safety. DPWES has indicated that there are no drainage complaints on file related to this property. Staff believes the addition will not significantly increase runoff or erosion as it would be partially constructed on the footprint of an existing patio.
Standard 9 <i>Represents the Minimum Amount of Reduction Necessary</i>	The layout of the existing primary dwelling limits the alternate locations for the construction of the partially constructed addition to the east. Since the property is almost built out to the setback lines, any additions to the east or west would also require a special permit. The partially constructed addition is also located on an existing patio and would not increase the

	<p>impervious area on-site.</p> <p>The proposed location of the partially constructed addition would pose a minimal visual impact. This location is screened from the neighbors by a fence 6 feet in height.</p> <p>Other issues of lot shape, yard determination, environmental characteristics, slopes, wells, easements and historic resources are not applicable to this site.</p>
Standard 10 BZA May Impose Conditions	Proposed development conditions are included in Appendix 1.
Standard 11 Submission Requirements	A copy of the plat is included in the beginning of this report.
Standard 12 Architectural Elevations	Proposed elevations are included in the beginning of this report and are also included as an attachment to the development conditions.

Variance Requirements (Appendix 13)

- Code of Virginia Sec. 15.2-2309, as amended

In addition to meeting the definition of variance, an application must satisfy a specific set of criteria in order for the Board to grant a variance. According to the recently amended Virginia state code in Sec. 15.2-2309, a variance meeting the definition shall be granted if the following elements are met:

1. The evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance (Sect. 15.2-2309.2)

Front Yard Coverage

In staff's opinion, the request for additional front yard coverage to retain the oversized driveway is not driven by a physical characteristic or utilization of the property. The existing asphalt driveway is under the 30 percent maximum allowed front yard coverage, and provides two residential parking spaces required by the Zoning Ordinance and adequate turn around space. The additional gravel area is not necessary for the safety or adequate use of the property. Therefore, staff does not believe the application satisfies this standard.

Rear Yard Coverage

In staff's opinion, the request for the additional rear yard coverage to keep the existing patio is driven by a physical characteristic of the property. The property is a corner lot and the eastern lot line has been deemed to be a rear lot line, but structures can have a side yard setback. Therefore, the total rear yard area of the 11,620 square foot property is only approximately 175 square feet. Almost structure or use in this location would exceed the 30 percent maximum rear yard coverage allowed. In addition, the house was constructed to the near the northern setback line, thereby limiting the amount of total rear yard available. Therefore, staff believes that the request to exceed the rear yard coverage limit satisfies this standard.

2. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance (Sect. 15.2-2309.2(i))

Front Yard Coverage

Staff believes the property was acquired in good faith based on the information contained in the applicants' statement of justification. However, the hardship for which the variance is being requested was created by the applicants when they added the additional gravel to the driveway. Staff does not believe the application satisfies this standard.

Rear Yard Coverage

Staff believes the property was acquired in good faith based on the information contained in the applicants' statement of justification. The placement of the house on the lot and the designation of the lot as a corner lot restricts the amount of any usable rear yard. Any structure or impervious surface over approximately 50 square feet would violate the zoning ordinance coverage requirement.

3. The granting of the variance will not be of substantial detriment to the adjacent property and nearby properties in the proximity of that geographical area (Sect. 15.2-2309.2(ii))

Front Yard Coverage

The amount of paving and gravel currently on the property is inconsistent with other homes on the street and in staff's opinion negatively affects adjacent properties. Staff believes that the applicants could remove the excess gravel driveway portion to bring the driveway within Zoning Ordinance standards. Staff does not believe that this standard is met.

Rear Yard Coverage

Staff does not believe the shallow rear yard is a hardship generally shared by any of the neighboring properties. As an at-grade patio screened by a wood fence, staff does not believe that the rear yard coverage exceeding the 30 percent maximum would negatively affect the neighbors.

4. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general reduction to be adopted as an amendment to the ordinance (Sect. 15.2-2309.2(iii))

Front Yard Coverage

The residential corner lots in the vicinity of the subject property are similar in terms of area, width, depth, and shape and contain single family detached dwellings of a similar size. Due to the location of the dwelling on the lot however, the property has a larger front yard than other dwellings on the same street. Therefore, as mentioned earlier there is adequate space for the two required parking spaces on-site required by the Zoning Ordinance and the extra gravel driveway area is not needed for the safety or functionality of the property.

Rear Yard Coverage

Conversely, the placement of the dwelling to the northern portion of the property limits the amount of rear yard area as defined by the zoning ordinance. Other nearby properties have a greater depth than the subject property and therefore have a larger functional rear yard.

5. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property (Sect. 15.2-2309.2(iv))

Staff finds that variance request for excess coverage in a front yard and a rear yard would not result in a use that is otherwise permitted or cause a change in the zoning classification of the property.

6. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application (Sect. 15.2-2309.2(v))

The variance application is the only mechanism to provide the relief requested for the coverage in both the front and rear yards.

CONCLUSION / RECOMMENDATION

Although this applicant and property have a long history of numerous zoning violations and complaints, it should be noted that this application addresses all outstanding violations and court orders and will bring this property into compliance.

Staff believes that the subject application is in conformance with the applicable Zoning Ordinance provisions with respect to the requests for the errors in building location. Staff finds, however, that only the rear yard coverage variance request has met the standards under the newly revised state code.

Staff recommends approval of SP 2015-MA-010 for the addition to remain with adoption of the proposed development conditions contained in Appendix 1.

Staff recommends denial in-part VC 2015-MA-001 for the front yard coverage greater than 30 percent. Staff believes that the applicant could provide an option for cars to park and maneuver without exceeding the maximum allowed 30 percent front yard coverage. Removal of a portion of the gravel area and/or pavement would not limit this maneuverability. However, if it is the intent of the BZA to approve the front yard coverage in the variance application, the BZA should condition its approval by requiring conformance with the proposed development conditions contained in Appendix 2.

Staff recommends approval-in-part of VC 2015-MA-001 for the rear yard coverage greater than 30 percent. Staff believes that the depth of the property and the location of the house limit the available rear yard area. In addition, any corner lot takes on side yard setbacks when rear yard coverage is determined. The total minimum required rear yard on this 11,520 square foot property is 175 square feet or 15 percent of the total property. Therefore staff believes that there the utilization of the property is limited by the Zoning Ordinance and that the variance would provide adequate relief for this property.

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Zoning Appeals.

The approval of this application does not interfere with, abrogate or annul any easements, covenants, or other agreements between parties, as they may apply to the property subject to the application.

APPENDICES

1. Proposed Special Permit Development Conditions
2. Proposed Variance Development Conditions
3. Applicant's Statement of Justification and Select File Photographs
4. Applicant's Affidavit
5. Complaint History
6. Building Permit History
7. June 24, 2011 Court Order for accessory structure
8. November 1, 2013 Agreed Final Order for Violations
9. April 25, 2014 Court Order to submit application items
10. December 19, 2014 Court Order for fines and submission requirements
11. Similar Case History
12. Applicable Zoning Ordinance Provisions
13. Variance provisions- Code of Virginia Sec. 15.2-2309, as amended

PROPOSED DEVELOPMENT CONDITIONS**SP 2015-MA-010****September 9, 2015**

If it is the intent of the Board of Zoning Appeals to approve SP 2015-MA-010 located at Tax Map 50-3 ((4)) 194 to permit an addition 5.4 feet from side lot line and reduction in minimum yard requirements based on error in building location to permit dwelling to remain 5 feet from side lot line and a deck (patio) to remain 2.5 feet and 17.9 feet from front lot lines, a deck (patio) to remain 1.0 foot from side lot line, and a deck (patio) to remain 1.2 feet from rear lot line staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

1. This approval is granted to the property only and is for the location indicated on the application, 7208 Westmoreland Road, and is not transferable to other land.
2. This special permit is granted only for the locations and heights of the addition and the errors in building locations to permit dwelling to remain 5 feet from side lot line and a deck (patio) to remain 2.5 feet and 17.9 feet from front lot lines, a deck (patio) to remain 1.0 foot from side lot line, and a deck (patio) to remain 1.2 feet from rear lot line on the plat titled, "Special Permit Plat, Lot 194, Section 4, Woodley," prepared by Michael L. Flynn, L.S., dated February 27, 2014 as revised through November 18, 2014, and approved with this application, as qualified by these development conditions.
3. All applicable permits and final inspections shall be obtained for the addition and the dwelling within 180 days of the approval of this application.
4. The proposed addition elevations are included as Attachment 1 and made part of these development conditions.
5. The walls of the proposed addition shall be painted or covered in a siding material that is compatible with the existing dwelling. In no event shall any unfinished cinderblock be visible from the surrounding properties or streets.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall take effect upon adoption of a resolution of approval by the Board of Zoning Appeals.

PROPOSED DEVELOPMENT CONDITIONS

VC 2015-MA-001

September 9, 2015

1. This variance is approved for the paved front yard coverage greater than 30 percent as shown on the plat titled, "Special Permit Plat, Lot 194, Section 4, Woodley," prepared by Michael L. Flynn, L.S., dated February 27, 2014 as revised through November 18, 2014, as submitted with this application and is not transferable to other land.
2. This variance is approved for the rear yard coverage greater than 30 percent as shown on the plat titled, "Special Permit Plat, Lot 194, Section 4, Woodley," prepared by Michael L. Flynn, L.S., dated February 27, 2014 as revised through November 18, 2014, as submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicants from compliance with the provisions of any applicable ordinances, regulations or adopted standards including requirements for building permits.

Statement of Justification

3/9/15

APPENDIX 3

The BZA determines that:

- ☒ A. The error exceeds ten (10) percent of the measurement involved, or
B. The error is up to ten (10) percent of the measurement involved and such reduction or modification is requested in conjunction with the approval of a special permit for another use or application for a variance on the property, or is in conjunction with another special permit for an error in building location on the property that exceeds ten (10) percent of the measurement involved, and

ALL OF THE ERRORS EXCEEDS 10% OF THE MEASUREMENT.

- C. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required, and

I WAS UNAWARE THAT WERE ZONING SET-BACK.

- D. Such reduction or modification will not impair the purpose and intent of this Ordinance, and

THIS MODIFICATION WILL NOT IMPAIR THE ZONING REGULATION.

- E. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and

THIS WILL NOT NEGATIVELY IMPACT MY NEIGHBORS.

- F. It will not create an unsafe condition with respect to both other property and public streets, and

IT WILL NOT AFFECT MY NEIGHBORS.

- G. To force compliance with the minimum yard requirements or location regulations would cause unreasonable hardship upon the owner.

THE ERRORS WERE EXISTING BEFORE THE NEED FOR SP APPLICATION AND TO CORRECT THE ERRORS NOW WILL CAUSE MY EXTREME FINANCIAL DIFFICULTY.

- H. The reduction or modification will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

IT WILL NOT INCREASE.

1. Only the following yard requirements shall be subject to such special permit:

- A. Minimum required yards, as specified in the residential, commercial, industrial and planned development districts in Articles 3, 4, 5 and 6, provided such yards are not subject to proffered conditions or development conditions related to yards and/or such yards are not depicted on an approved conceptual development plan, final development plan, development plan, special exception plat, special permit plat or variance plat.
- B. Yard regulations for pipestem lots and lots contiguous to pipestem driveways set forth in Sect. 2-416.
- C. Accessory structure location requirements set forth in Sect. 10-104.
- D. Regulations on permitted extensions into a minimum required yard as set forth in Sect. 2-412.

I WOULD LIKE TO EXTEND 4'6" (FEET) INTO THE 10-FOOT SETBACK.

Approval of a reduction of yard requirements specified in Paragraphs A, B and C above shall not result in any yard that is less than fifty (50) percent of the requirement and shall not result in any yard of less than five (5) feet, as measured from the lot line to the closest point of the proposed structure.

Approval of a reduction of yard requirements specified in Par. D above shall not result in an extension that exceeds the applicable distances set forth in Sect. 2-412 by more than fifty (50) percent. Where no extension is permitted by the provisions of Sect. 2-412, the BZA shall not approve a special permit that results in a structure that extends into a minimum required yard by more than fifty (50) percent.

- D. Such reduction shall not result in the placement of a detached accessory structure in a front yard where the placement of such accessory structure is not otherwise permitted in that yard.

NO ACCESSORY STRUCTURE IN A FRONT YARD

3. This special permit shall only apply to those lots that contain a principal structure and use that complied with the minimum yard requirements in effect when the use or structure was established.

WHEN THE HOUSE WAS CONSTRUCTED IT MET THE ZONING REGULATION.

4. The resulting gross floor area of an addition to an existing principal structure may be up to 150 percent of the total gross floor area of the principal structure that existed at the time of the first expansion request. The resulting gross floor area of any subsequent addition is limited to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion request, regardless of whether such addition complies with the minimum yard requirements or is the subject of a subsequent yard reduction special permit. If a portion of a single family detached dwelling is to be removed, no more than fifty (50) percent of the gross floor area of the existing dwelling at the time of the first yard reduction shall be removed. Notwithstanding the definition of gross floor area, as set forth in this Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage.

THE EXISTING DRAWING IS 16.60 SQ. FEET.

THE PROPOSED WILL BE 296 SQ. FEET (17.83% OF GFA.)

5. The resulting gross floor area of an existing accessory structure and any addition to it shall be clearly subordinate in purpose, scale, use and intent to the principal structure on the site.

ITS A VISITING ROOM, ONE STOREY.

6. The BZA shall determine that the proposed development will be in character with the existing on-site development in terms of the location, height, bulk and scale of the existing structure(s) on the lot.

IT WILL BE CONSTRUCTED WITH THE SAME MATERIALS WITH EXISTING HOUSE.

7. The BZA shall determine that the proposed development is harmonious with the surrounding off-site uses and structures in terms of location, height, bulk and scale of surrounding structures, topography, existing vegetation and the preservation of significant trees as determined by the Director.

*IT WILL NOT VISUALLY IMPACT MY NEIGHBOR.
AND IT IS IN THE SIDE AND REAR OF MY NEIGHBORS
AND THERE IS EXISTING SURROUNDING FENCES.*

8. The BZA shall determine that the proposed development shall not adversely impact the use and/or enjoyment of any adjacent property with regard to issues such as noise, light, air, safety, erosion, and stormwater runoff.

*IT WILL NOT AFFECT NOISE AND WATER RUNOFF
TO MY NEIGHBORS.*

9. The BZA shall determine that the proposed reduction represents the minimum amount of reduction necessary to accommodate the proposed structure on the lot. Specific factors to be considered include, but are not limited to, the layout of the existing structure; availability of alternate locations for the addition; orientation of the structure(s) on the lot; shape of the lot and the associated yard designations on the lot; environmental characteristics of the site, including presence of steep slopes, floodplains and/or Resource Protection Areas; preservation of existing vegetation and significant trees as determined by the Director; location of a well and/or septic field; location of easements; and/or preservation of historic resources.

*THIS IS AN EXISTING PATH BEFORE WE BOUGHT IT IN
1992 AND WE JUST WANT TO ENCLOSE IT.*

10. The BZA may impose such conditions as it deems necessary to satisfy these criteria, including, but not limited to imposition of a maximum gross floor area, floor area ratio, lot coverage, landscaping and/or screening requirements.

I UNDERSTAND IT.

Application No.(s):

SP 2015-MA-010/VC 2015-MA-001

(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 02/26/2014

(enter date affidavit is notarized)

124588

I, MARIANO C. EVANGELISTA JR, do hereby state that I am an
(enter name of applicant or authorized agent)

(check one)

☒

applicant

☐

applicant's authorized agent listed in Par. 1(a) below

and that, to the best of my knowledge and belief, the following is true:

- 1(a). The following constitutes a listing of the names and addresses of all **APPLICANTS, TITLE OWNERS, CONTRACT PURCHASERS**, and **LESSEES** of the land described in the application,* and, if any of the foregoing is a **TRUSTEE**,** each **BENEFICIARY** of such trust, and all **ATTORNEYS** and **REAL ESTATE BROKERS**, and all **AGENTS** who have acted on behalf of any of the foregoing with respect to the application:

(**NOTE**: All relationships to the application listed above in **BOLD** print must be disclosed. Multiple relationships may be listed together, e.g., **Attorney/Agent, Contract Purchaser/Lessee, Applicant/Title Owner**, etc. For a multiparcel application, list the Tax Map Number(s) of the parcel(s) for each owner(s) in the Relationship column.)

NAME (enter first name, middle initial, and last name)	ADDRESS (enter number, street, city, state, and zip code)	RELATIONSHIP(S) (enter applicable relationships listed in BOLD above)
MARIANO C. EVANGELISTA JR		OWNER
ARMIDA A. EVANGELISTA	7208 WESTMORELAND RD FALLS CHURCH, VA 22042	CO-OWNER

(check if applicable)

☐

There are more relationships to be listed and Par. 1(a) is continued on a "Special Permit/Variance Attachment to Par. 1(a)" form.

* In the case of a condominium, the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium.

** List as follows: Name of trustee, Trustee for (name of trust, if applicable), for the benefit of: (state name of each beneficiary).

Application No.(s):

SP 2015-MA-010/ VC 2015-MA-001
(county-assigned application number(s), to be entered by County Staff)

Page Two

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 02/26/2014
(enter date affidavit is notarized)

124588

1(b). The following constitutes a listing*** of the **SHAREHOLDERS** of all corporations disclosed in this affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 10 or less shareholders, a listing of all of the shareholders:

(NOTE: Include **SOLE PROPRIETORSHIPS, LIMITED LIABILITY COMPANIES, and REAL ESTATE INVESTMENT TRUSTS** herein.)

CORPORATION INFORMATION

NAME & ADDRESS OF CORPORATION: (enter complete name, number, street, city, state, and zip code)

N/A

DESCRIPTION OF CORPORATION: (check one statement)

- ☐ There are 10 or less shareholders, and all of the shareholders are listed below.
- ☐ There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.
- ☐ There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

NAMES OF SHAREHOLDERS: (enter first name, middle initial, and last name)

N/A

(check if applicable) ☐ There is more corporation information and Par. 1(b) is continued on a "Special Permit/Variance Attachment 1(b)" form.

*** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. *In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER or LESSEE* of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed.* Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.

Application No.(s): SP 2015-MA-010 / VC 2015-MA-001
(county-assigned application number(s), to be entered by County Staff)

Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 02/26/2014
(enter date affidavit is notarized)

124588

1(c). The following constitutes a listing*** of all of the **PARTNERS**, both **GENERAL** and **LIMITED**, in any partnership disclosed in this affidavit:

PARTNERSHIP INFORMATION

PARTNERSHIP NAME & ADDRESS: (enter complete name, number, street, city, state, and zip code)

(check if applicable) ☐ The above-listed partnership has no limited partners.

NAMES AND TITLE OF THE PARTNERS (enter first name, middle initial, last name, and title, e.g. **General Partner, Limited Partner, or General and Limited Partner**)

N/A

(check if applicable) ☐ There is more partnership information and Par. 1(c) is continued on a "Special Permit/Variance Attachment to Par. 1(c)" form.

*** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until: (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. *In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed.* Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 02/26/2014
(enter date affidavit is notarized)

124588

1(d). One of the following boxes must be checked:

☐ In addition to the names listed in Paragraphs 1(a), 1(b), and 1(c) above, the following is a listing of any and all other individuals who own in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE*** of the land:

☒ Other than the names listed in Paragraphs 1(a), 1(b), and 1(c) above, no individual owns in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE*** of the land.

2. That no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household owns or has any financial interest in the subject land either individually, by ownership of stock in a corporation owning such land, or through an interest in a partnership owning such land.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on the line below.)

NONE

(check if applicable) ☐ There are more interests to be listed and Par. 2 is continued on a "Special Permit/Variance Attachment to Par. 2" form.

Application No.(s):

SP 2015-MA-010/JC 2015-MA-001

(county-assigned application number(s), to be entered by County Staff)

Page Five

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 02/26/2014
(enter date affidavit is notarized)

124588

3. That within the twelve-month period prior to the public hearing of this application, no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household, either directly or by way of partnership in which any of them is a partner, employee, agent, or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent, or attorney or holds 10% or more of the outstanding bonds or shares of stock of a particular class, has, or has had any business or financial relationship, other than any ordinary depositor or customer relationship with or by a retail establishment, public utility, or bank, including any gift or donation having a value of more than \$100, singularly or in the aggregate, with any of those listed in Par. 1 above.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on line below.)

NONE

(NOTE: Business or financial relationships of the type described in this paragraph that arise after the filing of this application and before each public hearing must be disclosed prior to the public hearings. See Par. 4 below.)

(check if applicable) ☐ There are more disclosures to be listed and Par. 3 is continued on a "Special Permit/Variance Attachment to Par. 3" form.

4. That the information contained in this affidavit is complete, that all partnerships, corporations, and trusts owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land have been listed and broken down, and that prior to each and every public hearing on this matter, I will reexamine this affidavit and provide any changed or supplemental information, including business or financial relationships of the type described in Paragraph 3 above, that arise on or after the date of this application.

WITNESS the following signature:

(check one)

☒ Applicant

☐ Applicant's Authorized Agent

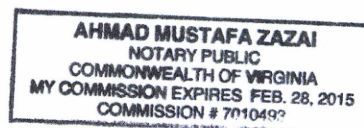
MARIANO C. EVANGELISTA JR. OWNER

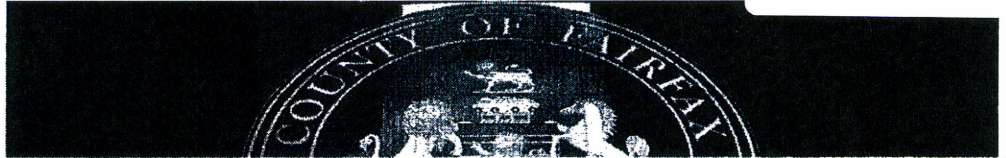
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 26 day of February 2014, in the State/Comm. of Virginia, County/City of Fairfax.

Notary Public

My commission expires: 02/28/2015




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Community Complaint Inquiry

(7208 WESTMORELAND RD, FALLS CHURCH)

Complaint Number	Description	Status	Opened	Closed	Disposition
78544	Duplicate Complaint	Closed	12/03/2011	12/05/2011	Duplicate Complaint
85285	Unpermitted Construction	Closed	07/02/2012	09/17/2012	Compliance
85574	Zoning	Under Investigation	07/12/2012		
86250	Duplicate Complaint	Closed	07/31/2012	08/02/2012	Duplicate Complaint
86667	Duplicate Complaint	Closed	08/12/2012	08/13/2012	Duplicate Complaint
88999	Unpermitted Construction	Closed	10/16/2012	01/17/2013	Unfounded (No Problem Found)
98137	Duplicate Complaint	Closed	08/20/2013	08/21/2013	Duplicate Complaint
104672	Grass	Closed	05/09/2014	05/28/2014	Compliance
109600	Duplicate Complaint	Closed	09/08/2014	09/10/2014	Duplicate Complaint
111220	Duplicate Complaint	Under Investigation	10/23/2014		

1



Complaint #	85574
Street Address	7208 Westmoreland Rd
Magisterial District	Mason
Complaint Description	Zoning
Agency	Code Compliance
Status	Under Investigation
Opened Date	07/12/2012
Closed Date	
Disposition	
Inspector Assigned	Peggy Delean, 703-324-1300
Notice of Violation and/or Corrective Work Order	Yes ADDITION, YARD SALES, ACCESSRY FENCE IN SIDE/REAR YD, ACCESSORY STRUCTURE EXCEED 7 FT, RESIDENTIAL USE PERMIT
Litigation	Yes

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(7208 WESTMORELAND RD, FALLS CHURCH)

Complaint Number	Description	Status	Opened	Closed	Disposition
78544	Duplicate Complaint	Closed	12/03/2011	12/05/2011	Duplicate Complaint
85285	Unpermitted Construction	Closed	07/02/2012	09/17/2012	Compliance
85574	Zoning	Under Investigation	07/12/2012		
86250	Duplicate Complaint	Closed	07/31/2012	08/02/2012	Duplicate Complaint
86667	Duplicate Complaint	Closed	08/12/2012	08/13/2012	Duplicate Complaint
88999	Unpermitted Construction	Closed	10/16/2012	01/17/2013	Unfounded (No Problem Found)
98137	Duplicate Complaint	Closed	08/20/2013	08/21/2013	Duplicate Complaint
104672	Grass	Closed	05/09/2014	05/28/2014	Compliance
109600	Duplicate Complaint	Closed	09/08/2014	09/10/2014	Duplicate Complaint
111220	Duplicate Complaint	Under Investigation	10/23/2014		

1

Complaint #	111220
Street Address	7208 Westmoreland Rd
Magisterial District	Mason
Complaint Description	Duplicate Complaint
Agency	Code Compliance
Status	Under Investigation
Opened Date	10/23/2014
Closed Date	
Disposition	
Inspector Assigned	Not Assigned, 703-324-1300
Notice of Violation and/or Corrective Work Order	No
Litigation	No

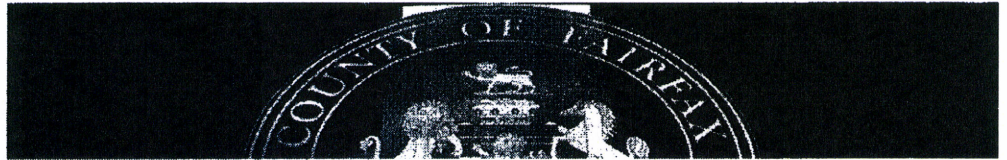
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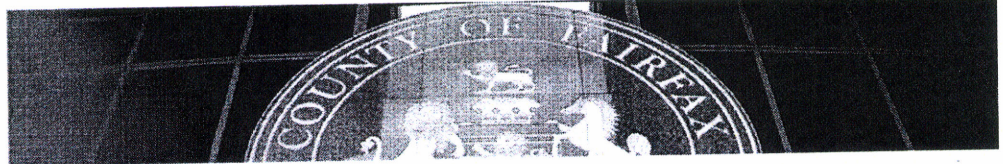
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(7208 WESTMORELAND RD, FALLS CHURCH)

Complaint Number	Description	Status	Opened	Closed	Disposition
29372	Zoning	Closed	02/12/2008	05/01/2011	Adjudicated
40963	Vehicle - Park On Grass	Closed	10/01/2008	10/02/2008	Duplicate Complaint
40964	Pavement On The Front Yard	Closed	10/01/2008	10/01/2008	Duplicate Complaint
40995	Multiple Dwelling	Closed	10/01/2008	10/02/2008	Duplicate Complaint
41186	Vehicle - Park On Grass	Closed	10/07/2008	10/24/2008	Compliance
44195	Unpermitted Shed	Closed	02/19/2009	09/21/2009	Compliance
74482	Grass	Closed	07/27/2011	07/28/2011	Unfounded (No Problem Found)
75523	Zoning	Closed	08/24/2011	02/04/2012	Compliance
76020	Duplicate Complaint	Closed	09/11/2011	09/12/2011	Duplicate Complaint
77487	Duplicate Complaint	Closed	10/22/2011	10/24/2011	Duplicate Complaint

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111220	Duplicate Complaint	Under Investigation	10/23/2014		

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All text: All ids: After Date:
Address: Project Name: Before Date:
Grid: 60 Quad: 3 Subdivision: 4 Block: Lot: 194 Suffix:

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Record

	Status	Date
1 <u>ISIS - Building Permit - 05257B0480</u> Tax Map: 050-3-((04)) 0194 Building Use Code: Single-Family, Detached Or Semi-Detached (010) Address: 007208 WESTMORELAND RD Type Work Code: Exterior Addition (A02)	Approved	Issued: 2005-09-15
2 <u>ISIS - Building Permit - 00193B0990</u> Tax Map: 050-3-((04)) 0194 Building Use Code: Single-Family, Detached Or Semi-Detached (010) Address: 007208 WESTMORELAND RD Type Work Code: Misc.-Entry Walls (O18)	Approved	Issued: 2000-07-17
3 <u>ISIS - Building Permit - 98336B0600</u> Tax Map: 050-3-((04)) 0194 Building Use Code: Single-Family, Detached Or Semi-Detached (010) Address: 007208 WESTMORELAND RD Type Work Code: Exterior Addition (A02)	Approved	Issued: 1998-12-03
4 <u>ISIS - Building Permit - 95188B0711</u> Tax Map: 050-3-((04)) 0194 Building Use Code: Single-Family, Detached Or Semi-Detached (010) Address: 007208 WESTMORELAND RD Type Work Code: Misc.-Entry Walls (O18)	Approved	Issued: 1998-10-08
5 <u>ISIS - Building Permit - 98246B0511</u> Tax Map: 050-3-((04)) 0194 Building Use Code: Single-Family, Detached Or Semi-Detached (010) Address: 007208 WESTMORELAND RD	Approved	Issued: 1998-10-08

Type Work Code: Misc.-Entry Walls (O18)

6 ISIS - Building Permit - 98246B0510

Approved

Issued: 1998-09-03

Tax Map: 050-13 ((04)) 0194

Building Use Code: Single-Family, Detached Or Semi-Detached (010)

Address: 007208 WESTMORELAND RD

Type Work Code: Misc.-Entry Walls (O18)

7 ISIS - Building Permit - 95188B0710

Approved

Issued: 1995-09-13

Tax Map: 050-13 ((04)) 0194

Building Use Code: Single-Family, Detached Or Semi-Detached (010)

Address: 007208 WESTMORELAND RD

Type Work Code: Exterior Addition (A02)

8 ISIS - Building Permit - 95184B0550

Cancelled

Applied: 1995-07-03

Tax Map: 050-13 ((04)) 0194

Building Use Code: Single-Family, Detached Or Semi-Detached (010)

Address: 007208 WESTMORELAND RD

Type Work Code: Repair Damange-Residential (R03)

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County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Office of the County Attorney
Suite 549, 12000 Government Center Parkway
Fairfax, Virginia 22035-0064
Phone: (703) 324-2421; Fax: (703) 324-2665
www.fairfaxcounty.gov

June 27, 2011

Mariano C. Evangelista
Armida A. Evangelista
7208 Westmoreland Road
Falls Church, Virginia 22042

Re: *Eileen M. McLane, Fairfax County Zoning Administrator v. Mariano C. Evangelista and Armida A. Evangelista*, Case No. CL-2008-14600, Fairfax County Circuit Court

Dear Mr. and Mrs. Evangelista:

Please find enclosed a copy of the Order entered on June 24, 2011, by Fairfax County Circuit Court Judge Charles J. Maxfield in the above-referenced case that dismisses the Rule to Show Cause issued against you, based on your bringing the shed located on your property into compliance with the Fairfax County Zoning Ordinance.

Sincerely,

Cherie L. Halyard
Cherie L. Halyard
Assistant County Attorney

Enclosure

\\s17prolaw01\Documents\102412\CLH\364905.doc

RECEIVED
Department of Planning & Zoning
JUN 12 2014
Zoning Evaluation Division

ACCESSORY STORAGE STRUCTURE

③

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

EILEEN M. McLANE, FAIRFAX COUNTY
ZONING ADMINISTRATOR,

Plaintiff,

v.

CASE NO. CL-2008-0014600

MARIANO C. EVANGELISTA,

And

ARMIDA A. EVANGELISTA,

Defendants.

ORDER

THIS CAUSE came on to be heard on the 24th day of June, 2011, for a hearing on the Rule to Show Cause issued by this Court on February 22, 2011, to the Defendants Mariano C. Evangelista and Armida A. Evangelista ("Defendants"), requiring them to show cause why they should not be held in contempt of court for violating the terms of the October 23, 2009, Final Order entered in this case; and

IT APPEARING TO THE COURT that on October 23, 2009, Fairfax County Circuit Court Judge Jonathan C. Thacher entered a Final Order in this case in which he declared, *inter alia*, that the Defendants were in violation of Fairfax County Zoning Ordinance ("Zoning Ordinance") §§ 2-302(6), 10-102(25), 10-104(10)(F)(1), and 10-104(10)(F)(2) for allowing and/or maintaining on the subject property an accessory storage structure that exceeds 2 1/2 feet in height, exceeds 200 square feet in gross floor space, and is located approximately 5 feet and 2

2 cc
W atty (FFV) 6/24/11

feet 9 inches from the side lot line and 12 feet 6 inches from the rear lot line of the subject property; and

IT FURTHER APPEARING TO THE COURT that on April 1, 2011, Fairfax County Circuit Court Judge Jane Marum Roush found the Defendants to be in contempt of court for having failed to comply with the terms of October 23, 2009, Final Order, continued the terms and conditions set forth in the October 23, 2009, Final Order, and ordered and directed the Defendants to appear before this Court on June 24, 2011, to have a hearing to determine if they are in full compliance with the October 23, 2009, Final Order and impose on the Defendants whatever sanctions may be necessary to ensure compliance with all provisions of the October 23, 2009, Final Order; and

IT FURTHER APPEARING TO THE COURT that as of April 4, 2011, the Defendants brought the subject property into compliance with the October 23, 2009, Final Order; and

IT FURTHER APPEARING TO THE COURT that the following relief should be granted; now, therefore, it is hereby

ADJUDGED AND ORDERED that the Rule to Show Cause issued on February 22, 2011, is hereby dismissed; and it is

FURTHER ADJUDGED AND ORDERED that the terms and conditions set forth in the October 23, 2009, Final Order are hereby continued and incorporated herein by reference.

ENTERED this 24 day of June, 2011.



Judge, Fairfax County Circuit Court

WE ASK FOR THIS:

DAVID P. BOBZIEN
COUNTY ATTORNEY

By: Cherie L. Halyard
Cherie L. Halyard (WSB No. 39521)

Assistant County Attorney

12000 Government Center Parkway, Suite 549

Fairfax, Virginia 22035-0064

(703) 324-2421

(703) 324-2665 (fax)

Counsel for Plaintiff Eileen M. McLane, Fairfax County Zoning Administrator

SEEN:

Mariano C. Evangelista

7208 Westmoreland Road

Falls Church, Virginia 22042-2536

Defendant *pro se*

SEEN:

Armida A. Evangelista

7208 Westmoreland Road

Falls Church, Virginia 22042-2536

Defendant *pro se*

Faye P. Blane
6-24-11

OCT. 26/2009

Report Date 10/26/2009 12:44 PM

Submitted By

Page 1

Inspection # 4333228

AP# 81500132

Inspection Type R FRAMING (RESIDENTIAL FRAMING)

1

Property Information

Address 7208 WESTMORELAND RD
FALLS CHURCH VA 22042-2536

Location

Application Information

Type DETACHED R DETACHED-SINGLE-STORE RESIDENTIAL TYPE: RFR
Type of Work SHED Dept of Commerce
Desc of Work build storage and waiting shed attached together per plans

Square Footage
AP Name NA

Initial Inspection

Call Date/Time 06/12/2009 10:19
Schedule Date/Time 06/16/2009 10:19
☒ System Generated
☐ Waived
Order/Group 0
Location

Assigned To
Preference

Inspection Results

Inspected By GFORD0
Start Date/Time 06/16/2009 13:47
Completed Date/Time 06/16/2009 13:47
Same Trip as Insp# 489164
Odometer Start 6697
Odometer Stop 6808

☐ Partial Inspection
Status Passed

Comments

JUNE 16, 2009

No Code Violation

Detail FINISHED BASEMENT INFO FOR DTA

Modified By

Modified Date/Time

Comments

No Comments

Detail INSPECTION ADDITIONAL INFO

Modified By MBRYA1

Modified Date/Time 06/12/2009 10:20

Comments

No Comments

Additional Info

Requestor's Contractor ID

or Requestor's Name MARIAIO

Requestor's Phone Number (703)641-0088

Reassigned To:

REQ Email

Sync Status

ADDL Email 1

ADDL Email 2

ADDL Email 3

ADDL Email 4

ADDL Email 5

Re-inspection Fee?

Revision to Plans?

Inspection Status

REV R

✓
3

RECEIVED
Department of Planning & Zoning
FEB 27 2014
Zoning Evaluation Division

[illegible]

Plaintiff,

y.

CASE NO. CL-2013-0000221

MARLANO C. EVANGELISTA,

And

ARMIDA A. EVANGELISTA,

Defendants.

AGREED FINAL ORDER

THIS CAUSE came before the Court by the consent of the Plaintiff, Leslie B. Johnson, Fairfax County Zoning Administrator ("Zoning Administrator") and Defendants Mariano C. Evangelista and Armida A. Evangelista ("Defendants"), for the entry of this Agreed Final Order; and

IT APPEARING TO THE COURT that the Zoning Administrator filed a Complaint for Declaratory Judgment and Injunctive Relief ("Complaint") in this case against the Defendants on January 3, 2013, alleging, *inter alia*, that the Defendants are in violation of the Fairfax County Zoning Ordinance ("Zoning Ordinance") in connection with the Defendants' use of the property located at 7208 Westmoreland Road, Falls Church, Virginia, which is shown on the Fairfax County Real Property Identification Map as Tax Map No. 50-3((4)) parcel 194 ("subject property"); and

IC 67 R d 1C6 Accd

IT FURTHER APPEARING TO THE COURT that the parties hereto agree that the terms of this Agreed Final Order are reasonable and shall not be modified except by the written agreement of the Plaintiff and the Defendants with the approval of this Court; and

IT FURTHER APPEARING TO THE COURT that this Agreed Final Order should be entered; now, therefore, it is hereby

ADJUDGED AND ORDERED THAT:

1. Allowing and/or maintaining an addition to the dwelling on the subject property that is located within the required minimum side yard on the subject property violates Zoning Ordinance §§ 2-307(1) and 3-407(2)(A)(1)(b).

2. Allowing and/or maintaining on the subject property accessory structures (concrete block posts) that exceed 7 feet in height and that are located within the minimum required side yard of the subject property violates Zoning Ordinance §§ 2-302(6) and 10-104(12)(D).

3. Erecting and/or allowing to be erected on the subject property a fence in the rear yard that exceeds 7 feet in height, on grade, violates Zoning Ordinance §§ 2-302(6) and 10-104(3)(C).

4. Within thirty (30) days after the date this Agreed Final Order is entered by the Fairfax County Circuit Court, the Defendants shall submit a full and complete application for a Group 9 Special Permit to the Fairfax County Board of Zoning Appeals ("BZA"), which, if approved, would allow: (i) the addition to the dwelling on the subject property that is located within the required minimum side yard, (ii) the accessory structures (concrete block posts) that exceed 7 feet in height and that are located within the minimum required side yard, and (iii) the fence in the rear yard that exceeds 7 feet in height, on grade, to remain on the subject property.

5. In the event that the Defendants fail to submit an application for a Group 9 Special Permit within the timeframe set forth in Paragraph 2 above, or in the event that the BZA refuses to accept or denies the Defendants' application for a Special Permit referenced in Paragraph 2 above, then within thirty (30) days of such failure, refusal, or denial, whichever first occurs, the Defendants shall bring the subject property into compliance with:

(a) Zoning Ordinance §§ 2-307(1) and 3-407(2)(A)(1)(b) by: (a) demolishing and permanently removing the addition to the dwelling from the subject property pursuant to any required demolition permit, and permanently relocating all resulting debris from the subject property to a lawful site, or (b) reducing the size of the addition to meet minimum required side yard requirements pursuant to any required building permit; and

(b) Zoning Ordinance §§ 2-302(6) and 10-104(12)(D) by: (a) permanently removing the accessory structures (concrete block posts) from the subject property and permanently relocating all resulting debris from the subject property to a lawful site; or (b) permanently reducing the height of the accessory structures (concrete block posts) to 7 feet in height or less to allow them to remain at their present location; or (c) permanently relocating the accessory structures (concrete block posts) to a distance within the minimum required side yard of the subject property; and

(c) Zoning Ordinance §§ 2-302(6) and 10-104(3)(C) by: (a) permanently removing the fence from the subject property and permanently relocating all resulting debris from the subject property to a lawful site; or (b) permanently reducing the height of the fence to 7 feet or less to allow it to remain in its present location; and.

6. Any Special Permit as set forth above shall be obtained by the Defendants by March 1, 2014, and if not obtained by that date the Defendants shall complete the height reduction and/or removal as set forth in Paragraph 5 above, by no later than April 1, 2014.

7. To the extent that the use of the subject property and the violations as set forth in Paragraphs 1, 2, and 3 above are not resolved by a Special Permit as set forth in Paragraph 4 above, the Defendants, their agents, employees, tenants, and/or any successors-in-interest at any time in the future are permanently enjoined from:

(a) allowing and/or maintaining any addition to the dwelling on the subject property to be located within the required minimum side yard on the subject property in violation of Zoning Ordinance §§ 2-307(1) and 3-407(2)(A)(1)(b), and also permanently enjoining the subject property from being used in any such manner at any time in the future; and

(b) allowing and/or maintaining on the subject property accessory structures that exceed 7 feet in height and that are located within the minimum required side yard of the subject property in violation of Zoning Ordinance §§ 2-302(6) and 10-104(12)(D), and also permanently enjoining the subject property from being used in any such manner at any time in the future; and

(c) erecting and/or allowing to be erected on the subject property a fence in the rear yard that exceeds 7 feet in height, on grade in violation of Zoning Ordinance §§ 2-302(6) and 10-104(3)(C), and also permanently enjoining the subject property from being used in any such manner at any time in the future.

8. If the Defendants, their agents, employees, tenants, and/or any successors-in-interest fail to comply with any provisions set forth in this Agreed Final Order, he/she/they shall pay the sum of \$100 per day to the County of Fairfax (delivered to the Office of the County

Attorney in the form of a certified check made payable to the "County of Fairfax") for every day the Court finds a violation. Payment of this amount shall be in addition to any additional sanctions the Court may impose upon a finding of contempt for any violation of this Agreed Final Order.

9. The Zoning Administrator and/or her agents shall be permitted to enter upon the subject property at reasonable times to inspect the subject property for the purpose of monitoring compliance with this Agreed Final Order.

10. The terms set forth in this Agreed Final Order are reasonable and shall not be modified except by the written agreement of the parties hereto with the approval of this Court.

11. The Clerk of the Fairfax County Circuit Court shall record a copy of the final order entered in favor of the Zoning Administrator in this case among the land records of Fairfax County, Virginia, pursuant to Va. Code Ann. § 17.1-227 (Supp. 2012), to give notice of the prohibitions and restrictions contained therein to any successors-in-interest of the Defendants and index said final order as follows:

GRANTORS: Mariano C. Evangelista; Armida A. Evangelista

GRANTEES: Leslie B. Johnson; Fairfax County Zoning Administrator

AND THIS CAUSE IS FINAL.

ENTERED this 1 day of Nov, 2013.


JUDGE, FAIRFAX COUNTY CIRCUIT COURT

WE ASK FOR THIS:

DAVID P. BOBZIEN
COUNTY ATTORNEY

By: Cherie L. Halyard
Cherie L. Halyard (WSB No. 39521)

Assistant County Attorney

12000 Government Center Parkway, Suite 549

Fairfax, Virginia 22035

Phone: (703) 324-2421

Fax: (703) 324-2665

Cherie.Halyard@fairfaxcounty.gov

Counsel for Plaintiff Leslie B. Johnson, Fairfax County Zoning Administrator

SEEN AND AGREED:

Mariano Q. Evangelista

Mariano Q. Evangelista

7208 Westmoreland Road

Falls Church, Virginia 22042

Defendant *pro se*

**PLEASE SIGN
& DATE**

Armida A. Evangelista

Armida A. Evangelista

7208 Westmoreland Road

Falls Church, Virginia 22042

Defendant *pro se*

A COPY TESTE:
JOHN T. FREY, CLERK

BY: Carlota Castillo
Deputy Clerk

Date: 11/13/2013

Original retained in the office of
the Clerk of the Circuit Court of
Fairfax County, Virginia



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Office of the County Attorney
Suite 549, 12000 Government Center Parkway
Fairfax, Virginia 22035-0064
Phone: (703) 324-2421; Fax: (703) 324-2665
www.fairfaxcounty.gov

April 28, 2014

VIA FIRST-CLASS MAIL

Mariano C. Evangelista
7208 Westmoreland Road
Falls Church, Virginia 22042

Re: *Leslie B. Johnson, Fairfax County Zoning Administrator v. Mariano C. Evangelista, et al.*, Fairfax County Circuit Court Case No. CL-2013-0000221

Dear Mr. Evangelista:

For your records, please find enclosed a copy of the Order entered by Judge Lorraine Nordlund in court on Friday, April 25, 2014. This Order, among other things, directs you to submit a full and complete Special Permit application for the addition, concrete posts, and fence that are the subject of the above-referenced lawsuit by no later than June 25, 2014. Your current Special Permit application (SP 2014-0098) is currently considered "incomplete" because the following required materials were not included with your submission:

- Special Permit plat
- Statements addressing the Special Permit standards
- Statements addressing additional standards for Error in Building Location (Zoning Ordinance § 8-914, Paragraph 2, items A-G) for each structure in error
- Statements addressing additional standards for the fence/wall increase in height (Zoning Ordinance § 8-923)

These missing items were discussed with you when you came by the Department of Planning and Zoning on April 10, 2014.

As I stated to you, it is imperative that you submit all missing items from your Special Permit application well before June 25, 2014, so that you have enough time to cure any additional deficiencies your application may have before the June 25th deadline. Please direct any and all questions about your Special Permit application to Michael P. Chauncey, Planning Technician II, Application Acceptance Section, ZED, DPZ, at 703-324-1290.

Evangelista

Page 2

The next hearing date in Circuit Court on this matter is Friday, December 19, 2014, at 10 a.m. You are directed to appear in Court on that date. If you have not obtained a Special Permit for the addition, concrete posts, and fence by that date, or if you have not removed or relocated these items such that your property complies with the Zoning Ordinance by that date, I will be asking the Court to find you in contempt and to impose the \$100/day fine for every day your property remains in violation of the November 1, 2013, Agreed Final Order.

Sincerely,


Cherie L. Halyard
Assistant County Attorney

cc: Peggy Delean, Department of Code Compliance
Michael P. Chauncey, Zoning Evaluation Division, Department of Planning and Zoning
(ZED/DPZ)
Deborah Lesko Pemberton, ZED/DPZ

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Leslie B. Johnson,
Fairfax County Zoning
Plaintiff(s), Administrator

Case No.: CL-2013-221

v.

Mariano C. Evangelista,
Defendant(s). et al.

ORDER

This matter came to be heard on the 25th day of April, 2014 on the
Plaintiff(s)/Defendant(s) motion on a Rule to Show Cause

Upon the matters presented to the Court at the hearing, it is hereby

ADJUDGED, ORDERED, and DECREED as follows:

• The Court does not find the Defendants in
contempt of the Agreed Final order because
the Defendants have a ^{incomplete} Special Permit application
pending with the Fairfax County Department
of Planning + Zoning, which was filed on Feb. 27,
2014; and

The Defendants are ordered to submit a full
and complete Special Permit application: ➡

Enforced this day of , 2013.

Circuit Court Judge

SEEN AND

Counsel for Plaintiff/Complainant

SEEN AND

Counsel for Defendant

for a Group 9 Special Permit to the Fairfax County Board of Zoning Appeals pursuant to the Agreed Final Order by no later than June 25, 2014, and

This matter is CONTINUED to Friday, December 19, 2014, at 10 a.m. on the Civil motions docket to determine whether the Defendants are in compliance with the provisions of the Agreed Final Order; and this Order, at that time, to enter judgment against the Defendants for any amounts they may then owe the County of Fairfax pursuant to the Agreed Final Order; and to determine any additional coercive sanctions that should be imposed upon the Defendants as a result of any continued contempt of Court.

AND THIS MATTER IS CONTINUED.

Entered this 25th day of April, 2014.


Circuit Court Judge

SEEN AND objected to:

on the grounds that the Court declined to find the Defendants in


Cheryl Halyard
Counsel for Plaintiff/Complainant

Contempt
of
the
Agreed
Final
Order

SEEN AND _____


Counsel for Defendant



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Office of the County Attorney
Suite 549, 12000 Government Center Parkway
Fairfax, Virginia 22035-0064
Phone: (703) 324-2421; Fax: (703) 324-2665
www.fairfaxcounty.gov

October 2, 2014

VIA FIRST-CLASS MAIL

Mariano C. Evangelista
7208 Westmoreland Road
Falls Church, Virginia 22042

Re: *Leslie B. Johnson, Fairfax County Zoning Administrator v. Mariano C. Evangelista, et al.*, Fairfax County Circuit Court Case No. CL-2013-0000221

Dear Mr. Evangelista:

This letter is sent in response to your letter dated September 23, 2014 (see copy enclosed), sent to the attention of Mr. Michael L. Flynn of Alexandria Surveys, LLC, and Ms. Peggy Delean of the Department of Code Compliance. In your letter, you state, among other things, that Ms. Debbie Lesko Pemberton, Senior Applications Acceptance Planner, told you that there are "discrepancies" in your plats that must be corrected by both Mr. Flynn and Ms. Delean.

Please be advised that it is not the responsibility of Ms. Delean to correct any information or discrepancies contained in the plats attached to your Special Permit Application (SP 2014-0098). Despite the fact that Ms. Pemberton has had numerous conversations with you explaining in great detail what is needed to be done by you to correct the deficiencies in your Special Permit Application, your Special Permit Application remains deficient in the areas outlined in the August 21, 2014, letter sent to you from Ms. Pemberton (see copy enclosed). It is your responsibility to correct these deficiencies in your Special Permit application. Until you correct these deficiencies in your Special Permit application, your Special Permit application will remain in an "incomplete" status and will not be processed.

Sincerely,

Cherie L. Halyard
Cherie L. Halyard
Assistant County Attorney

Enclosures

cc: Peggy Delean, Department of Code Compliance
Deborah Lesko Pemberton, Zoning Evaluation Division, Department of Planning
and Zoning

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County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

August 21, 2014

Mariano C. Evangelista
7208 Westmoreland Road
Falls Church, VA 22042

Re: Special Permit Application - Mariano C. Evangelista

Dear Mr. Evangelista:

The Special Permit Application submitted on behalf of Mariano C. Evangelista Jr. has been reviewed for compliance with the provisions of Section 8-011 of the Fairfax County Zoning Ordinance. Based on this review, it has been determined that the Special Permit Application does not meet the minimum submission requirements and therefore has not been accepted for processing. Attached to this letter is a listing of the deficiencies which must be addressed before the application can be accepted.

If you have any questions regarding the steps necessary to meet the submission requirements in order that the application can be accepted, please call the Application Acceptance Section at (703) 324-1290.

Sincerely,

Deborah Lesko Pemberton, Senior Applications Acceptance Planner
Special Projects/Applications Management Branch, ZED, DPZ

DLP

Attachments: a/s
File: SP 2014-0098

CHECKLIST REPORT

<u>Status</u>	<u>Item</u>	<u>Submission Requirement</u>	<u>Comment</u>
SUBMISSION REQUIREMENT			
DEFICIENT	1.00	FOUR (4) COPIES OF AN APPLICATION ON FORMS PROVIDED BY THE COUNTY, COMPLETED AND SIGNED BY THE APPLICANT.	UPDATE PROPOSED TO READ: TO PERMIT REDUCTION TO MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT DWELLING TO REMAIN 9.5 FT AND DECK TO REMAIN ____ FT AND ACCESSORY STORAGE STRUCTURE TO REMAIN 4.2 FT FROM SIDE LOT LINE, TO PERMIT FENCE GREATER THAN 7 FT IN HEIGHT TO REMAIN IN REAR YARD AND GREATER THAN 4 FT IN HEIGHT TO REMAIN IN THE FRONT YARD OF A CORNER LOT
COMPLETE	2.00	ONE (1) COPY OF THE CURRENT FAIRFAX COUNTY ZONING SECTION SHEET(S) COVERING THE AREA OF THE APPLICATION, AT A SCALE OF ONE INCH EQUALS FIVE HUNDRED FEET (1"=500'), SHOWING: (IF MORE THAN ONE ZONING SECTION SHEET IS REQUIRED TO COVER THE SUBJECT PROPERTY WITHIN A 500 FT RADIUS, SUCH SHEETS SHALL BE ATTACHED SO AS TO CREATE AN INTELLIGIBLE MAP. COPIES OF ZONING SECTION SHEETS MAY BE OBTAINED FROM THE MAPS AND PUBLICATIONS OFFICE, SUITE 156 OF THE GOVERNMENT CENTER).	
COMPLETE	2.01	EXISTING ZONING DISTRICTS FOR ALL LAND SHOWN ON MAP	
COMPLETE	2.02	BOUNDARIES OF THE SUBJECT PROPERTY OUTLINED IN RED	
COMPLETE	3.00	PHOTOGRAPHS OF THE APPLICATION PROPERTY AND ABUTTING PROPERTIES SHOWING EXISTING STRUCTURES, TERRAIN AND VEGETATION AS VIEWED FROM ALL LOT LINES AND STREET LINES OF THE APPLICATION PROPERTY. THE PHOTOGRAPHS SHALL BE CLEARLY DATED AND LABELED AS TO THE LOCATION AND DIRECTION FROM WHICH THE PHOTOGRAPHS WERE TAKEN. THE USE OF DIGITAL PHOTOGRAPHY IS PREFERRED IN WHICH CASE A DISK CONTAINING THOSE DIGITAL PHOTOGRAPHS SHALL ALSO BE PROVIDED, IN ADDITION TO PRINTED MATERIAL.	
COMPLETE	4.00	THE APPLICANT'S AFFIDAVIT, AS PRESENTED ON AN AFFIDAVIT FORM APPROVED BY THE BOARD OF SUPERVISORS AND PROVIDED BY THE COUNTY, COMPLETED, SIGNED BY THE APPLICANT OR THE APPLICANT'S AUTHORIZED AGENT AND NOTARIZED.	
DEFICIENT	5.00	A WRITTEN STATEMENT FROM THE APPLICANT DESCRIBING THE PROPOSED USE, GIVING ALL PERTINENT DATA, INCLUDING SPECIFICALLY:	STATEMENT OF JUSTIFICATION REFERS TO ENCLOSURE OF PATIO. IF SO, THIS SHOULD BE REFLECTED ON THE PLAT MEASURED TO ITS CLOSEST POINT (CURRENTLY MEASURED FROM THE FURTHEST POINT)
COMPLETE	5.01	TYPE OF OPERATION(S)	
COMPLETE	5.02	HOURS OF OPERATION	

CHECKLIST REPORT

<u>Status</u>	<u>Item</u>	<u>Submission Requirement</u>	<u>Comment</u>
SUBMISSION REQUIREMENT			
COMPLETE	5.03	ESTIMATED NUMBER PATRONS/CLIENTS/PATIENTS/PUPILS, ETC.	
COMPLETE	5.04	PROPOSED NUMBER EMPLOYEES/ATTENDANTS/TEACHERS ETC.	
COMPLETE	5.05	ESTIMATE OF TRAFFIC IMPACT OF THE PROPOSED USE, INCLUDING THE MAXIMUM EXPECTED TRIP GENERATION AND THE DISTRIBUTION OF SUCH TRIPS BY MODE AND TIME OF DAY.	
COMPLETE	5.06	VICINITY OR GENERAL AREA TO BE SERVED BY THE USE	
COMPLETE	5.07	DESCRIPTION OF BUILDING FACADE AND ARCHITECTURE OF PROPOSED NEW BUILDING OR ADDITIONS.	
DEFICIENT	5.08	A LISTING, IF KNOWN, OF ALL HAZARDOUS OR TOXIC SUBSTANCES AS SET FORTH IN TITLE 40, CODE OF FEDERAL REGULATIONS PARTS 118.4, 302.4, AND 355; ALL HAZARDOUS WASTE AS SET FORTH IN COMMONWEALTH OF VIRGINIA/ DEPARTMENT OF WASTE MANAGEMENT REGULATIONS VR 672-10-1-VIRGINIA HAZARDOUS WASTE MANAGEMENT REGULATIONS; AND/OR PETROLEUM PRODUCTS AS DEFINED IN TITLE 40, CODE OF FEDERAL REGULATIONS PART 280; TO BE GENERATED, UTILIZED, STORED, TREATED, AND/OR DISPOSED OF ON SITE AND THE SIZE AND CONTENTS OF ANY EXISTING OR PROPOSED STORAGE TANKS OR CONTAINERS.	PLEASE ADDRESS THIS STATEMENT
DEFICIENT	5.09	A STATEMENT THAT THE PROPOSED DEVELOPMENT CONFORMS TO THE PROVISIONS OF ALL APPLICABLE ORDINANCES, REGULATIONS AND ADOPTED STANDARDS OR, IF ANY WAIVER, EXCEPTION OR VARIANCE IS SOUGHT BY THE APPLICANT, SUCH SHALL BE SPECIFICALLY NOTED WITH THE JUSTIFICATION FOR SUCH MODIFICATION.	PLEASE ADDRESS THIS STATEMENT
COMPLETE	6.00	A STATEMENT WHICH CONFIRMS THE OWNERSHIP OF THE SUBJECT PROPERTY, AND THE NATURE OF THE APPLICANT'S INTENT IN SAME. IF THE APPLICANT IS NOT THE OWNER OF THE PROPERTY INVOLVED IN THE APPLICATION, EVIDENCE MUST BE SUBMITTED SHOWING THAT THE APPLICANT WILL HAVE THE RIGHT TO USE THE PROPERTY AS PROPOSED.	
DEFICIENT	7.00	ONE 8 1/2" X 11" REDUCTION OF THE SPECIAL PERMIT PLAT.	
N/A	8.00	STATE TRANSPORTATION IMPACT ANALYSIS PURSUANT TO CHAPTER 627.	

CHECKLIST REPORT

<u>Status</u>	<u>Item</u>	<u>Submission Requirement</u>	<u>Comment</u>
ADDITIONAL SUBMISSION REQUIREMENT			
COMPLETE	910.00		
DEFICIENT	911.00	TEN (10) COPIES OF A PLAT WITH A MAXIMUM SIZE OF 24 IN. BY 36 IN., AND ONE 8.5 X 11 REDUCTION OF THE PLAT. THE PLAT SHALL BE DRAWN TO A SCALE OF NOT LES THAN 1 IN. = 50 FT (1" = 50') UNLESS A SMALLER SCALE IS REQUIRED TO ACCOMMODATE THE DEVELOPMENT. PLAT SHALL BE CERTIFIED BY A PROFESSIONAL ENGINEER, LAND SURVEYOR, ARCHITECT, OR LANDSCAPE ARCHITECT LICENSED BY THE STATE OF VA. AND SHALL CONTAIN THE FOLLOWING INFORMATION:	THE CERTIFIED PLAT MUST MEET THE SUBMISSION REQUIREMENTS SET FORTH IN THE ZONING ORDINANCE AND REQUIRES THE ITEMS INDICATED BELOW TO BE ADDRESSED
COMPLETE	911.01	BOUNDARIES OF ENTIRE PROPERTY, WITH BEARINGS AND DISTANCES OF THE PERIMETER PROPERTY LINES AND OF EACH ZONING DISTRICT.	
COMPLETE	911.02	TOTAL AREA OF THE PROPERTY AND OF EACH ZONING DISTRICT IN SQ FT OR ACRES.	
COMPLETE	911.03	SCALE AND NORTH ARROW, WITH NORTH ORIENTED TO THE TOP OF THE PLAT AND ON ALL SUPPORTING GRAPHICS.	
DEFICIENT	911.04	LOCATION OF ALL EXISTING STRUCTURES, WITH DIMENSIONS, INCLUDING HEIGHT OF ANY STRUCTURE AND PENTHOUSE, AND IF KNOWN, THE CONSTRUCTION DATE(S) OF ALL EXISTING STRUCTURES.	<p>PROVIDE THE SPECIFIC LOCATION FOR THE "6.5' HT COLUMNS" AS THEY APPEAR ON THE PLAT TO BE ONE CONTINUOUS STRUCTURE. IF IT IS A FENCE AND COLUMNS PLEASE INDICATE EACH APPROPRIATELY, TO INCLUDE THEIR HEIGHTS AND DISTANCES FROM LOT LINES.</p> <p>THE STATEMENT OF JUSTIFICATION INDICATES THE ENCLOSURE OF THE PATIO. IF SO, PLEASE CLARIFY, THE STRUCTURE MUST BE SHOWN ON THE PLAT AS PROPOSED.</p> <p>MEASUREMENT TO THE "PATIO" MUST BE MEASURED TO THE CLOSEST POINT, NOT THE FURTHEREST POINT. IF THIS DIMENSION IS CLOSER THAN 5 FT, WE MUST ADD THIS TO THE APPLICATION</p>

CHECKLIST REPORT

<u>Status</u>	<u>Item</u>	<u>Submission Requirement</u>	<u>Comment</u>
ADDITIONAL SUBMISSION REQUIREMENT			
COMPLETE	911.05	ALL REQUIRED MINIMUM YARDS TO INCLUDE FRONT, SIDE AND REAR, AND A GRAPHIC DEPICTION OF THE ANGLE OF BULK PLANE, IFF APPLICABLE, AND THE DISTANCES FROM ALL EXISTING STRUCTURES TO LOT LINES.	
COMPLETE	911.06	MEANS OF INGRESS & EGRESS TO THE PROPERTY FROM A PUBLIC STREET(S).	
DEFICIENT	911.08	LOCATION OF WELL AND/OR SEPTIC FIELD IF APPLICABLE	PLEASE ADDRESS ON THE PLAT
DEFICIENT	911.10	LOCATION OF ALL EXISTING UTILITY EASEMENTS HAVING A WIDTH OF TWENTY-FIVE (25) FEET OR MORE, AND ALL MAJOR UNDERGROUND UTILITY EASEMENTS REGARDLESS OF WIDTH.	PLEASE ADDRESS ON THE PLAT
DEFICIENT	911.11	SEAL AND SIGNATURE OF PROFESSIONAL PERSON CERTIFYING THE PLAT.	PLEASE UPDATE
COMPLETE	912.00	STATEMENT OF JUSTIFICATION EXPLAINING HOW THE ERROR IN BUILDING LOCATIONS OCCURRED AND ANY SUPPORTIVE MATERIAL SUCH AS AERIAL PHOTOGRAPHS, BUILDING PERMIT APPLICATIONS, COUNTY ASSESSMENT RECORDS, COPY OF THE CONTRACT TO BUILD THE STRUCTURE WHICH IS IN ERROR, OR A STATEMENT FROM A PREVIOUS OWNER INDICATING HOW THE ERROR IN BUILDING LOCATION OCCURRED.	

General Additional Submission Checklist Comment:

WE CONTINUE TO AWAIT A CERTIFIED PLAT TO BE SUBMITTED SO THAT FURTHER REVIEW OF THE APPLICATION CAN BE PERFORMED

September 23, 2014

✓ Mr. Michael L. Flynn
Land Surveyor
Alexandria Surveys, LLC
3949 Pender Drive, Ste # 120
Fairfax, VA 22030
Tel. No. 703-636-1313 Fax No. 703-636-4266
AND

Ms. Peggy D3lean
Code Compliance Investigator
Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, VA 22035-5505
Phone 703-324-1300 FAX 703-324-9346

RECEIVED
COUNTY ATTORNEY'S OFFICE
14 SEP 23 AM 10:44

RE: PLAT Showing Location Survey on
LOT 194 SECTION 4 WOODLEY
Fairfax County, Virginia
on February 27, 2014

Dear Sir and Madam:

In our meeting with Ms. Debbie Lesko Pemberton, Senior Applications Acceptance Planner, Special Projects/Applications Management Branch, Zoning Evaluation Division, DPZ, Fairfax County, VA on September 17, 2014, she has indicated to me that there are some "discrepances" in certain physical measurements on the above cited-matter (see Attached 2 Plats) which must be corrected by both of you as reported/recorded individually on the plats.

~~For~~ this matter, kindly address these issues as soon as possible so that Ms. Pemberton can submit my pending application for a Special Permit to the Board of Zoning Administration without further delays.

Also, this matter is scheduled for Court Hearing on December 15, 2014 under pending Court Order Case No. CL-2008-146000

Please don't hesitate ^{to call} me by phone or ^{send} letter at my home address whenever I CAN BE OF HELP.

Thank you and God bless you.

Sincerely,



Mariano C. Evangelista, Jr.
7208 Westmoreland Rd, Falls Church, VA 22042
(703) 537-1081

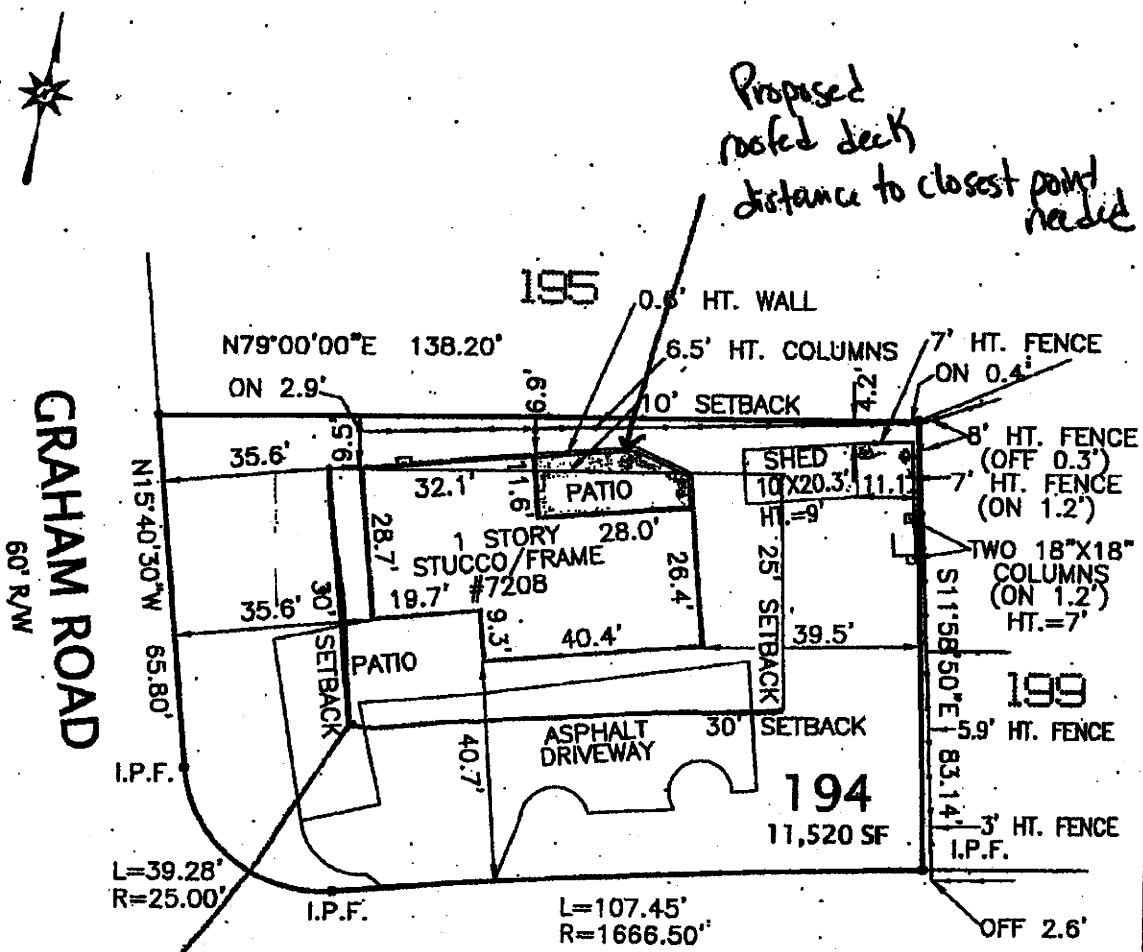
Attachments: A/S

CC: Deborah Lesko Pemberton
Senior Applications Acceptance Planner
Special Projects/Applications Management Branch
Zoning Evaluation Division, DPZ

Cherie L. Halyard (VSB No. 39521) ✓
Assistant County Attorney
12000 Government Center Parkway, Suite
Fairfax, Virginia 22035-0064
(703) 324-0064
(703) 324-2665 (fax)
Counsel for Plaintiff Fairfax County Zoning Administrator

PERSONALLLY DELIVERED BY:

Mariano C. Evangelista, Jr.
on September 28, 2014.



*Outline patio
+ possible
dimensions
+ distances
to lot line*

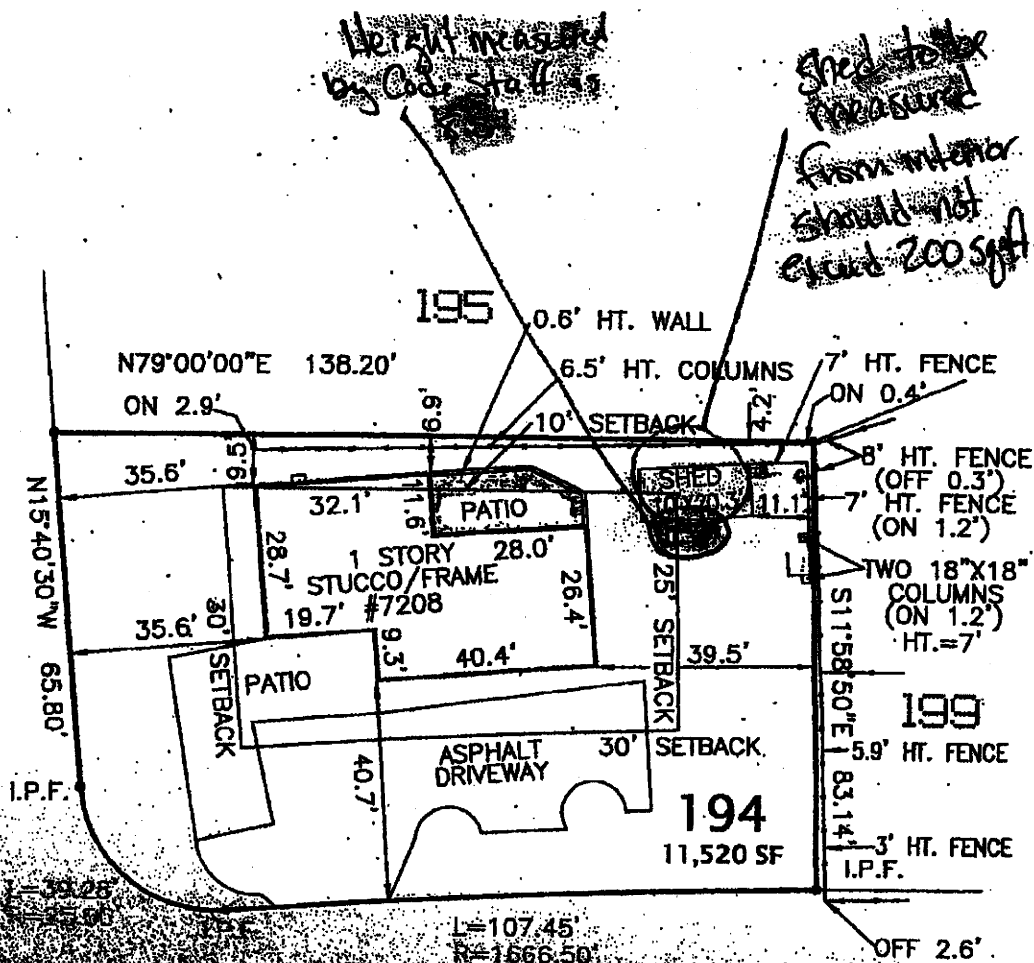
*Separate patio
from driveway
delimitation*

30-6 = 24 to front lot line is closest point permitted

PLAT
SHOWING LOCATION SURVEY ON
LOT 194 SECTION 4
WOODLEY
FAIRFAX COUNTY, VIRGINIA
SCALE: 1" = 30' FEBRUARY 27, 2014



GRAHAM ROAD
60' R/W



WESTMORELAND ROAD

R/W VARIES

PLAT
SHOWING LOCATION SURVEY ON
LOT 194 SECTION 4
WOODLEY
FAIRFAX COUNTY, VIRGINIA
SCALE: 1" = 30' FEBRUARY 27, 2014

4

Attachment #1**County of Fairfax, Virginia**

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Office of the County Attorney
Suite 549, 12000 Government Center Parkway
Fairfax, Virginia 22035-0064
Phone: (703) 324-2421; Fax: (703) 324-2665
www.fairfaxcounty.gov

RECEIVED
Department of Planning & Zoning

JAN 16 2015

December 30, 2014

Zoning Evaluation Division

VIA FIRST-CLASS MAIL

Mariano C. Evangelista
7208 Westmoreland Road
Falls Church, Virginia 22042

Re: *Leslie B. Johnson, Fairfax County Zoning Administrator v. Mariano C. Evangelista, et al.*, Fairfax County Circuit Court Case No. CL-2013-0000221

Dear Mr. Evangelista:

For your records, please find enclosed a copy of the Order entered by Judge Lorraine Nordlund on December 19, 2014, at the conclusion of the hearing on the Rule to Show Cause. As we discussed at the courthouse on that date, this Order, among other things, lists the remaining items that you must submit as a result of the certified plat that you provided to the Department of Planning and Zoning on November 18, 2014.

The next hearing date on this matter is Friday, January 23, 2015, at 10 a.m.

Please contact me with any questions or concerns.

Sincerely,

Cherie L. Halyard
Assistant County Attorney

Enclosure

cc: Peggy Delean, Department of Code Compliance
Deborah Lesko Pemberton, Zoning Evaluation Division, Department of Planning and Zoning

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Leslie B. Johnson, Fairfax
County Zoning Administrator
Plaintiff(s),

v.

Mariano C. Evangelista, et al.
Defendant(s).

Case No.: CL-2013-0000221

ORDER

This matter came to be heard on the 19th day of December, 2014 on the
Plaintiff(s)/Defendant(s) motion for a Rule to Show Cause issued against
the Defendants

Upon the matters presented to the Court at the hearing, it is hereby

ADJUDGED, ORDERED, and DECREED as follows:

1. The Agreed Final Order entered on Nov. 1, 2013 did not
specify a specific date on which fines would begin to run
upon a finding of contempt for failure to comply with
the Agreed Final Order.

2. The Defendants are in contempt of court for having
failed to comply with the Agreed Final Order and this
Court's April 25, 2014 Order by failing to submit a full and
complete Group 9 Special Permit application by June 25, 2014,

Entered this _____ day of _____, 2014.

and →

Circuit Court Judge


SEEN AND _____

SEEN AND _____

Counsel for Plaintiff/Complainant

Counsel for Defendant

Judge *Musler*

3. As a result of this finding of contempt, the Defendants shall pay the County of Fairfax the sum of \$100.00 per day for every day after today that this Court finds that the Defendants have failed to comply with the terms of the Agreed Final Order, the Court's April 25, 2014, order, and this order.
4. As a result of the certified plat submitted by the Defendants and received by the ^{Fairfax County} Department of Planning and Zoning (DPZ) ^{on May 16, 2014}, the Defendants shall submit the following items to DPZ, to the attention of Deborah Lesko Pemberton:
- Photographs of all decks (patios) located on the subject property; and
 - Photographs of the front yard driveway coverage on the subject property; and
 - Photographs of the rear yard coverage on the subject property; and
 - A completed Variance application form for the front yard and rear yard coverage on the subject property; and
- 

Entered this _____ day of _____, 2014.

Circuit Court Judge

SEEN AND _____:

SEEN AND _____:

Counsel for Plaintiff/Complainant

Counsel for Defendant

(cont'd.)

e. Statements of justification for:

- cl
- (1) the variance for the front and rear yard coverages; and
 - (2) the errors in building location for the decks (patios) (i.e. an explanation from the Defendants as to how the errors in building location occurred for the decks (patios)).

5. The Defendants shall submit the items listed in Paragraph 4 above prior to the next hearing date in this matter (below).

6. This matter shall be continued to Judge Nordlund's 10 a.m. civil motions docket on Friday, January 23, 2015, and the Defendants are directed to appear.

AND THIS MATTER IS CONTINUED.

Entered this 19th day of December, 2014.

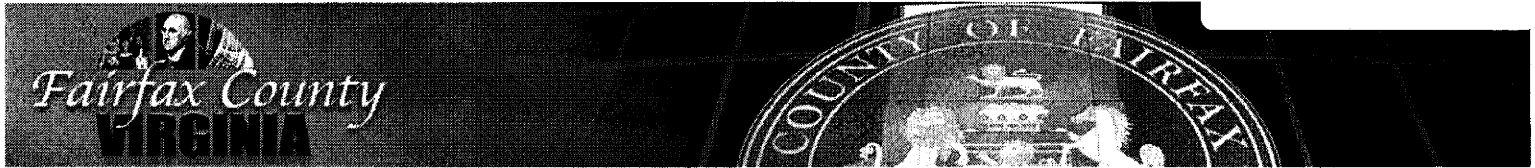
Linn Nord
Circuit Court Judge

SEEN AND _____:

Cheriff O'Halyard
Counsel for Plaintiff/Complainant
Assistant County Attorney

SEEN AND _____:

See A. J. [Signature]
Counsel for Defendant

**Land Development Information History: ZAPS - SP - SP 2009-MA-036****General Information**

Application Number: SP 2009-MA-036

Application Description: REDUCTION OF CERTAIN YARD REQUIREMENTS TO PERMIT CONSTRUCTION OF ADDITION 24.0 FEET FROM BOTH FRONT LOT LINES OF A CORNER LOT

Current Status: APPLICATION APPROVED

Date Accepted by County: 05/15/2009

Magisterial District(s): MASON

Link to LDSNet record : [SP 2009-MA-036](#)

Application and Agent

Primary Applicant: MICHAEL HALE
7120 NOLAND RD
FALLS CHURCH VA 22042-2517
(703) 752-3153

Agent: MICHAEL HALE
7120 NOLAND RD
FALLS CHURCH VA 22042-2517
(703) 752-3153

Approved Zoning

Zoning District: R- 4

Approved Area: 10,226.00 SQ FEET

Approved Land Use(s): REDUCTION OF CERTAIN SFD YARDS

Approved Dwelling Units: 0
Approved Affordable Dwelling Units: 0
Approved Dwelling Units per Acres: 0
Approved Gross Floor Area: 0
Approved Floor Area Ratio: 0
Parcel Identifiers (PINS): 0503 04 0178

Waivers/Modifications and Supplemental Motions

Waivers/Modifications: No Waivers/Modifications
Supplemental Motions: No Supplemental Motions

PC, BOS and BZA Hearings

PC Hearing: Not Scheduled
BZA Hearing: Occured on: 07/28/2009; Decision: APPROVE

Fairfax County Contact Information

Staff Coordinator: DEBORAH HEDRICK

Attachments

Attachment Type	Record Date	Format Type
STAFF REPORT	2009-07-21	PORTABLE DOCUMENT FORMAT
DEVELOPMENT PLAN	2009-12-10	PORTABLE DOCUMENT FORMAT

Contact Us: [General \(Office of Public Affairs\)](#) | [Technical \(Web Administrator\)](#) | [Directed Inquiries \(County Agencies\)](#)
Phone: [County Main Number - 703-FAIRFAX \(703-324-7329\)](#), TTY 711 | [County Phone Listing](#)

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8-006 General Standards

In addition to the specific standards set forth hereinafter with regard to particular special permit uses, all special permit uses shall satisfy the following general standards:

1. The proposed use at the specified location shall be in harmony with the adopted comprehensive plan.
2. The proposed use shall be in harmony with the general purpose and intent of the applicable zoning district regulations.
3. The proposed use shall be such that it will be harmonious with and will not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the adopted comprehensive plan. The location, size and height of buildings, structures, walls and fences, and the nature and extent of screening, buffering and landscaping shall be such that the use will not hinder or discourage the appropriate development and use of adjacent or nearby land and/or buildings or impair the value thereof.
4. The proposed use shall be such that pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood.
5. In addition to the standards which may be set forth in this Article for a particular group or use, the BZA shall require landscaping and screening in accordance with the provisions of Article 13.
6. Open space shall be provided in an amount equivalent to that specified for the zoning district in which the proposed use is located.
7. Adequate utility, drainage, parking, loading and other necessary facilities to serve the proposed use shall be provided. Parking and loading requirements shall be in accordance with the provisions of Article 11.
8. Signs shall be regulated by the provisions of Article 12; however, the BZA, under the authority presented in Sect. 007 below, may impose more strict requirements for a given use than those set forth in this Ordinance.

8-903 Standards For All Group 9 Uses

In addition to the general standards set forth in Sect. 006 above, all Group 9 special permit uses shall satisfy the following standards:

1. All uses shall comply with the lot size and bulk regulations of the zoning district in which located, except as may be qualified below.
2. All uses shall comply with the performance standards specified for the zoning district in which located.
3. Before establishment, all uses, including modifications or alterations to existing uses, shall be subject to the provisions of Article 17, Site Plans, or other appropriate submission as determined by the Director.

Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location

The BZA may approve a special permit to allow a reduction to the minimum yard requirements for any building existing or partially constructed which does not comply with such requirements applicable at the time such building was erected, but only in accordance with the following provisions:

1. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by ten (10) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia and such plat shall contain the following information:
 - A. Boundaries of entire property, with bearings and distances of the perimeter property lines and of each zoning district.
 - B. Total area of the property and of each zoning district in square feet or acres.
 - C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.
 - D. Location of all existing structures, with dimensions, including height of any structure and penthouse, and if known, the construction date(s) of all existing structures.
 - E. All required minimum yards to include front, side and rear, and a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing structures to lot lines.
 - F. Means of ingress and egress to the property from a public street(s).
 - G. For nonresidential uses, the location of parking spaces, indicating minimum distance from the nearest property line(s).
 - H. If applicable, the location of well and/or septic field.
 - I. For nonresidential uses, a statement setting forth the maximum gross floor area and FAR for all uses.
 - J. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.
 - K. Seal and signature of professional person certifying the plat.

A -

In addition, the application shall contain a statement of justification explaining how the error in building location occurred and any supportive material such as aerial photographs, Building Permit applications, County assessments records, a copy of the contract to build the structure which is in error, or a statement from a previous owner indicating how the error in building location occurred.

2. The BZA determines that:
 - A. The error exceeds ten (10) percent of the measurement involved, and
 - B. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required, and
 - C. Such reduction will not impair the purpose and intent of this Ordinance, and
 - D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
 - E. It will not create an unsafe condition with respect to both other property and public streets, and
 - F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.
 - G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
3. In granting such a reduction under the provisions of this Section, the BZA shall allow only a reduction necessary to provide reasonable relief and may, as deemed advisable, prescribe such conditions, to include landscaping and screening measures, to assure compliance with the intent of this Ordinance.
4. Upon the granting of a reduction for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.
5. The BZA shall have no power to waive or modify the standards necessary for approval as specified in this Section.

8-922 Provisions for Reduction of Certain Yard Requirements

The BZA may approve a special permit to allow a reduction of certain yard requirements subject to all of the following:

1. Only the following yard requirements shall be subject to such special permit:
 - A. Minimum required yards, as specified in the residential, commercial, industrial and planned development districts in Articles 3, 4, 5 and 6, provided such yards are not subject to proffered conditions or development conditions related to yards and/or such yards are not depicted on an approved conceptual development plan, final development plan, development plan, special exception plat, special permit plat or variance plat.
 - B. Yard regulations for pipestem lots and lots contiguous to pipestem driveways set forth in Sect. 2-416.
 - C. Accessory structure location requirements set forth in Sect. 10-104.
 - D. Regulations on permitted extensions into a minimum required yard as set forth in Sect. 2-412.

Approval of a reduction of yard requirements specified in Paragraphs A, B and C above shall not result in any yard that is less than fifty (50) percent of the requirement and shall not result in any yard of less than five (5) feet, as measured from the lot line to the closest point of the proposed structure.

Approval of a reduction of yard requirements specified in Par. D above shall not result in an extension that exceeds the applicable distances set forth in Sect. 2-412 by more than fifty (50) percent. Where no extension is permitted by the provisions of Sect. 2-412, the BZA shall not approve a special permit that results in a structure that extends into a minimum required yard by more than fifty (50) percent.

2. Such reduction shall not result in the placement of a detached accessory structure in a front yard where the placement of such accessory structure is not otherwise permitted in that yard.

3. This special permit shall only apply to those lots that contain a principal structure and use that complied with the minimum yard requirements in effect when the use or structure was established.
4. The resulting gross floor area of an addition to an existing principal structure may be up to 150 percent of the total gross floor area of the principal structure that existed at the time of the first yard reduction request. In such instance, if a portion of the principal structure is to be removed, no more than fifty (50) percent of the gross floor area of the existing principal structure at the time of the first yard reduction shall be removed.
5. The resulting gross floor area of an existing accessory structure and any addition to it shall be clearly subordinate in purpose, scale, use and intent to the principal structure on the site.
6. The BZA shall determine that the proposed development will be in character with the existing on-site development in terms of the location, height, bulk and scale of the existing structure(s) on the lot.
7. The BZA shall determine that the proposed development is harmonious with the surrounding off-site uses and structures in terms of location, height, bulk and scale of surrounding structures, topography, existing vegetation and the preservation of significant trees as determined by the Director.
8. The BZA shall determine that the proposed development shall not adversely impact the use and/or enjoyment of any adjacent property with regard to issues such as noise, light, air, safety, erosion, and stormwater runoff.
9. The BZA shall determine that the proposed reduction represents the minimum amount of reduction necessary to accommodate the proposed structure on the lot. Specific factors to be considered include, but are not limited to, the layout of the existing structure; availability of alternate locations for the addition; orientation of the structure(s) on the lot; shape of the lot and the associated yard designations on the lot; environmental characteristics of the site, including presence of steep slopes, floodplains and/or Resource Protection Areas; preservation of existing vegetation and significant trees as determined by the Director; location of a well and/or septic field; location of easements; and/or preservation of historic resources.

10. The BZA may impose such conditions as it deems necessary to satisfy these criteria, including, but not limited to imposition of a maximum gross floor area, floor area ratio, lot coverage, landscaping and/or screening requirements.
11. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by fifteen (15) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia. Such plat shall contain the following information:
 - A. Boundaries of entire property, with bearings and distances of the perimeter property lines, and of each zoning district.
 - B. Total area of the property and of each zoning district in square feet or acres.
 - C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.
 - D. The location, dimension and height of any building, structure or addition, whether existing or proposed. In addition, for decks, the height of the finished floor above finished ground level.
 - E. All required minimum yards to include front, side and rear, a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing and proposed structures to lot lines.
 - F. Means of ingress and egress to the property from a public street(s).
 - G. For nonresidential uses, the location of parking spaces, indicating minimum distance from the nearest property line(s).
 - H. If applicable, the location of a well and/or septic field.
 - I. Existing and proposed gross floor area and floor area ratio.
 - J. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.

- F
- K. The location, type and height of any existing and proposed landscaping and screening.
 - L. Approximate delineation of any floodplain designated by the Federal Insurance Administration, United States Geological Survey, or Fairfax County, the delineation of any Resource Protection Area and Resource Management Area, and the approximate delineation of any environmental quality corridor as defined in the adopted comprehensive plan, and, if applicable, the distance of any existing and proposed structures from the floodplain, Resource Protection Area and Resource Management Area, or environmental quality corridor.
 - M. Seal and signature of professional person certifying the plat.
12. Architectural depictions of the proposed structure(s) as viewed from all lot lines and street lines to include building materials, roof type, window treatment and any associated landscaping and/or screening shall be provided.

VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

CHAPTER 597

An Act to amend and reenact §§ 15.2-2201, 15.2-2308, 15.2-2309, and 15.2-2314 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2308.1, relating to variances.

[H 1849]

Approved March 26, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2201, 15.2-2308, 15.2-2309, and 15.2-2314 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2308.1 as follows:

§ 15.2-2201. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affordable housing" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

"Conditional zoning" means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any tract of land which will be principally devoted to agricultural production.

"Historic area" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

"Incentive zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features, design elements, uses, services, or amenities desired by the locality, including but not limited to, site design incorporating principles of new urbanism and traditional neighborhood development, environmentally sustainable and energy-efficient building design, affordable housing creation and preservation, and historical preservation, as part of the development.

"Local planning commission" means a municipal planning commission or a county planning commission.

"Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under jurisdiction of the U.S. Department of Defense, including any leased facility, or any land or interest in land owned by the Commonwealth and administered by the Adjutant General of Virginia or the Virginia Department of Military Affairs. "Military installation" does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

"Mixed use development" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

"Official map" means a map of legally established and proposed public streets, waterways, and public areas adopted by a locality in accordance with the provisions of Article 4 (§ 15.2-2233 et seq.) hereof.

"Planned unit development" means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

"Planning district commission" means a regional planning agency chartered under the provisions of Chapter 42 (§ 15.2-4200 et seq.) of this title.

"Plat" or "plat of subdivision" means the schematic representation of land divided or to be divided and information in accordance with the provisions of §§ 15.2-2241, 15.2-2242, 15.2-2258, 15.2-2262, and 15.2-2264, and other applicable statutes.

"Preliminary subdivision plat" means the proposed schematic representation of development or subdivision that establishes how the provisions of §§ 15.2-2241 and 15.2-2242, and other applicable

statutes will be achieved.

"Resident curator" means a person, firm, or corporation that leases or otherwise contracts to manage, preserve, maintain, operate, or reside in a historic property in accordance with the provisions of § 15.2-2306 and other applicable statutes.

"Site plan" means the proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

"Special exception" means a special use; that is a use not permitted in a particular district except by a special use permit granted under the provisions of this chapter and any zoning ordinances adopted herewith.

"Street" means highway, street, avenue, boulevard, road, lane, alley, or any public way.

"Subdivision," unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258.

"Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the *shape*, size, or area of a lot or parcel of land; or the size, *height*, area, bulk, or location of a building or structure when the strict application of the ordinance would ~~result in unnecessary or unreasonable hardship to the property owner~~ *unreasonably restrict the utilization of the property*, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the ~~intended spirit and purpose of the ordinance, and would result in substantial justice being done.~~ It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

"Zoning" or "to zone" means the process of classifying land within a locality into areas and districts, such areas and districts being generally referred to as "zones," by legislative action and the prescribing and application in each area and district of regulations concerning building and structure designs, building and structure placement and uses to which land, buildings and structures within such designated areas and districts may be put.

§ 15.2-2308. Boards of zoning appeals to be created; membership, organization, etc.

A. Every locality that has enacted or enacts a zoning ordinance pursuant to this chapter or prior enabling laws, shall establish a board of zoning appeals that shall consist of either five or seven residents of the locality, appointed by the circuit court for the locality. Boards of zoning appeals for a locality within the fifteenth or nineteenth judicial circuit may be appointed by the chief judge or his designated judge or judges in their respective circuit, upon concurrence of such locality. Their terms of office shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The secretary of the board shall notify the court at least thirty days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the locality except that one may be a member of the local planning commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies. The circuit court for the City of Chesapeake and the Circuit Court for the City of Hampton shall appoint at least one but not more than three alternates to the board of zoning appeals. At the request of the local governing body, the circuit court for any other locality may appoint not more than three alternates to the board of zoning appeals. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman twenty-four hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.

B. Localities may, by ordinances enacted in each jurisdiction, create a joint board of zoning appeals that shall consist of two members appointed from among the residents of each participating jurisdiction by the circuit court for each county or city, plus one member from the area at large to be appointed by the circuit court or jointly by such courts if more than one, having jurisdiction in the area. The term of office of each member shall be five years except that of the two members first appointed from each jurisdiction, the term of one shall be for two years and of the other, four years. Vacancies shall be filled for the unexpired terms. In other respects, joint boards of zoning appeals shall be governed by all other provisions of this article.

C. With the exception of its secretary and the alternates, the board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The board

may elect as its secretary either one of its members or a qualified individual who is not a member of the board, excluding the alternate members. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. ~~For~~ *Notwithstanding any other provision of law, general or special, for the conduct of any hearing, a quorum shall be not less than a majority of all the members of the board and the board shall offer an equal amount of time in a hearing on the case to the applicant, appellant or other person aggrieved under § 15.2-2314, and the staff of the local governing body.* Except for matters governed by § 15.2-2312, no action of the board shall be valid unless authorized by a majority vote of those present and voting. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the locality and general laws of the Commonwealth. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.

D. Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the board may receive such compensation as may be authorized by the respective governing bodies. Any board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after a hearing held after at least fifteen days' notice.

E. Notwithstanding any contrary provisions of this section, in the City of Virginia Beach, members of the board shall be appointed by the governing body. The governing body of such city shall also appoint at least one but not more than three alternates to the board.

§ 15.2-2308.1. Boards of zoning appeals, ex parte communications, proceedings.

A. *The non-legal staff of the governing body may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.*

B. *Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of § 2.2-3707.*

C. *For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the office of the attorney for the locality, or for the board, or who is appointed by special law or pursuant to § 15.2-1542. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.*

D. *This section shall not apply to cases where an application for a special exception has been filed pursuant to subdivision 6 of § 15.2-2309.*

§ 15.2-2309. Powers and duties of boards of zoning appeals.

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. *The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence.* The board shall consider the purpose and intent of any applicable ordinances, laws, and regulations in making its decision. *For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.*

2. ~~To authorize~~ *Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases such a variance as defined in § 15.2-2201 from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows: the burden of proof shall be on the*

applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

When a property owner can show that his Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and where by reason of the exceptional and any hardship was not created by the applicant for the variance; narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance. (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

No such variance shall be authorized by the board unless it finds:

- a. That the strict application of the ordinance would produce undue hardship relating to the property;
- b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- c. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

No variance shall be authorized considered except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In authorizing granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

§ 15.2-2314. Certiorari to review decision of board.

Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition that shall be styled "In Re: date Decision of the Board of Zoning Appeals of [locality name]" specifying the grounds on which aggrieved within 30 days after the final decision of the board.

Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the secretary of the board of zoning appeals or, if no secretary exists, the chair of the board of zoning appeals, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by this section. The governing body, the landowner, and the applicant before the board of zoning appeals shall be necessary parties to the proceedings *in the circuit court*. The court may permit intervention by any other person or persons jointly or severally aggrieved by any decision of the board of zoning appeals.

The board of zoning appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of the portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

~~If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take evidence as it may direct and report the evidence to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.~~ The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, or any modification of zoning requirements pursuant to § 15.2-2286, the findings and conclusions of the board of zoning appeals on questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in the court. The court shall hear any arguments on questions of law *de novo*.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted an application for a variance, ~~or application for a special exception,~~ the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by ~~showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning~~

appeals was plainly wrong and in violation of the purpose and intent of the zoning ordinance proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted application for a special exception, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong, was in violation of the purpose and intent of the zoning ordinance, and is not fairly debatable.

In the case of an appeal from the board of zoning appeals to the circuit court of a decision of the board, any party may introduce evidence in the proceedings in the court in accordance with the Rules of Evidence of the Supreme Court of Virginia.

Costs shall not be allowed against the locality, unless it shall appear to the court that it acted in bad faith or with malice. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the locality may request that the court hear the matter on the question of whether the appeal was frivolous.